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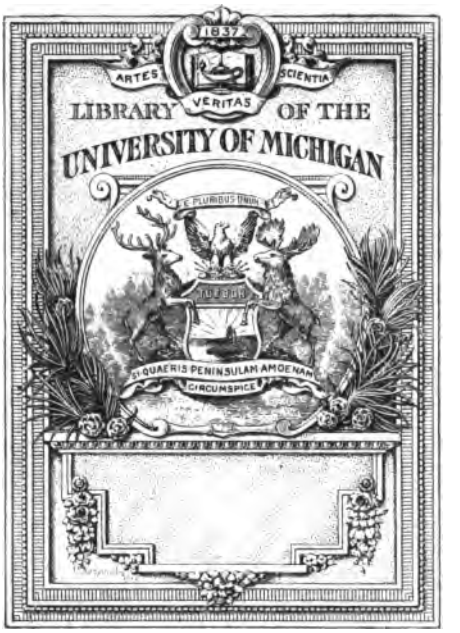
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THE

TREATY

OF

UTRECHT.

BY

M. CHARLES GIRAUD,

MEMBER OF THE INSTITUTE OF FRANCE.

TRANSLATED FROM THE FRENCH.

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APPENDIX.

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THE TREATY OF UTRECHT.

THE history of modern diplomacy offers no negotiation of greater importance, after that of the peace of Westphalia, than that of the peace of Utrecht. In fact the treaty of the 11th April, 1713, had for its aim not only to regulate the interests of certain sovereign houses, arising out of the inheritance of the crown of Spain; but also to establish a salutary equilibrium among the European powers. It defined and limited the law established by the interest of the general security of the different states; and thus reconciling this sacred law with the respect due to the independence of nations in the interior exercise of their sovereignty, it completed the treaty of the Pyrenees, and fixed the fundamental principle of the law of nations among the moderns.

Since the year 1713, the increase of the power of Great Britain, the diminution of that of Holland, the aggrandizement of Prussia, the extension of the domination of Russia, the partition of Poland, the decrease of Sweden, the emancipation of the great colonies of America, and the establishment of representative monarchies, have changed the elements of equilibrium; but the principles have remained the same, and the *droit public* of the south of Europe may be considered as still resting on the basis laid at Utrecht.

The treaty of Utrecht was followed by a peace that lasted during a quarter of a century between the most civilized nations in the world. During this period, the political spirit of Europe was strengthened and developed; the old enmity which separated France and England, since the time of the feudal wars, appeared extinct. These two great powers, united by a strict alliance, were the arbiters of the general tranquillity, until the war of the Austrian succession. With the union of interests and policy, were joined the more intimate communications of intelligence; and literature and science felt the advantage of the free intercourse of opinion between the two people.

The peace of Utrecht had been concluded by the Tory party, in spite of the opposition of the Whig party, who then urged, to the detriment of the true interests of England, a prolongation of the war against France. Long after the peace, party hatred still pursued the principal authors of the treaty, whom Europe now honours as the benefactors of mankind; nevertheless this great diplomatic act has always been carried into execution with perfect sincerity.

I propose to explain the objects of the public compacts concluded at Utrecht as far as concerns the political interests of France and Spain; I will show the true sense of the treaties, and prevent, if possible, all room for error in that respect. I will examine especially if in a recent negotiation there is a real or possible contravention to the faith of the conventions. To discuss with a perfect understanding, and resolve with an exact certitude, this question of high jurisprudence, it will be necessary first to cast a coup-d'œil on the events which preceded the act of peace, in order to seize the spirit and bearing of the negotiations: we must penetrate the intentions of the contracting parties, in order to obtain the interpretation of the texts; we must, finally, seek in the execution of the diplomatic acts, and in facts accomplished with the consent of the nations interested, the true and just meaning of the treaty.

§ I. OF THE LAW OF SUCCESSION TO THE CROWN IN SPAIN.

The crown was at first elective in this country, during the period of the Gothic kings, until the invasion of the Arabs. After the conquest of Spain by the Mussulmans, the Gothic or Christian race maintained itself, as is well known, in Asturias, and the crown continued there to be elective, but only in the males of a family of heroes. The election was restricted to the members of this noble race during three centuries. The crown having thus become as it were the property of a family, they were led to proceed a step further. The common law of successions, in civil matters, was applied to the transmission of the crown or political power, in consequence of a confusion encouraged by the ancient Visigothic or Roman law, the permanent and fundamental law of the Christians of Spain, and which admitted females to an equal partition of goods with the males, differing in this from the Salic law, which, in the kingdom of the Franks, had excluded females from sharing the allodium or hereditary land. The application of private law to political law thus led in the two countries to inverse results. A cause peculiar to Spain, joined with the general causes which, everywhere else but in the kingdom of France, introduced the succession of women into the fiefs, produced effects, the developement of which was further favourised by the geographical disposition of the Peninsula, and the custom of the succession of females was established in the inheritance of the crown in the same manner as in the succession of the domestic inheritance.

This law of succession remained as a custom during more than two centuries, until the epoch, when Alfonso the Wise consigned it in his famous code entitled *Las siete Partidas* (about the year 1260). After having established and given the reasons for the rights of the eldest son in the family, the king expresses himself thus:—*

* See the text in the Appendix, No. 1.

"Although, according to ancient custom, fathers had generally the care to make a portion for their younger children, nevertheless wise and able men, taking into consideration the common good of all, and knowing that the partition of the succession of kingdoms could not be made without causing their destruction, according to the words of our Lord Jesus Christ, who has said that 'every kingdom which is divided shall fall into ruin;' have thought it just that the sovereignty of a kingdom should pass to the eldest son only, after the death of his father. And such has always been the usage, in all the countries of the world where the sovereignty has been transmitted by way of blood, and especially in Spain. To avoid therefore a multitude of evils which have happened, and which may happen again, they have established that the succession of the kingdom should pass always in direct line. And for this reason, they willed that, if there were no male children, the eldest daughter should succeed to the crown. And they ordained that, if the eldest son should die before inheriting, and should leave by his lawful wife a son or a daughter, that he or she should have the inheritance, and no other. But, in default of all those, the nearest of kin should inherit the kingdom, being capable of it, and if he has done nothing which ought to make him lose it. The people is, then, bound to observe all these laws; for otherwise the king could not be perfectly guarded, if the people did not thus guard the kingdom. And, in consequence, every man who should act against these laws would render himself guilty of manifest treason, and would merit the punishment incurred by all those who despise the authority of the king."

The book of the *Partidas* obtained the force of a positive law in 1338, by a royal act of king Alphonso XI. This law received a new confirmation in 1505, in the general assembly of the Cortes, called together in the town of Toro. A resolution, decreed by that assembly, reproduced textually the law of Alphonso the Wise;* Charles V conformed to it exactly in his will, date June 6th, 1554;† and Philip IV having collected into one body or *recopilacion* the laws of Castille, in 1640, gave a new sanction to the law of Alphonso.‡

An unsuccessful attempt had been made, in the

* See the *Commentarii in leges Taurinas*, of Ant. Gomez; *Genevæ*, 1628, fol. p. 186.

† See Dumont, *Corps Diplomatique*, supplem., tom. II, part i, p. 141.

‡ *Nueva recopilacion de las leyes de Castilla;* Madrid, 1640, fol. Law 15, tit. vii, lib. v.

fifteenth century, to introduce the Salic law into Spain, which is related as follows by an ancient Spanish historian. "In 1475, which was the first year of the reign of Ferdinand and Isabella, there was at Segovia a certain contestation between the king and the queen, to know which of the two ought to succeed to the kingdoms of Castille and Leon,—the queen, a daughter of king John II, or the king, a son of John king of Aragon, a descendant in the male line from John I, king of Castille and Leon. Those who took part with the king wanted to introduce into Castille and Leon a new law, similar to that of the Salic law of the French, which excludes females from the royal patrimony. The queen's party, which was that of justice, supported her right by the laws of the kingdom and by the ancient histories. . . . . Sentence was pronounced in favour of queen Isabella."*

What Ferdinand the Catholic had not been able to do, was partially accomplished by Philip V, immediately after the treaty of Utrecht had fixed the crown in his race. He abolished the ancient *cognatic* succession, according to which, in the same line, the eldest was preferred to the juniors, and the males to the females,—in different lines, the females of the direct or nearest line prevailed over the males of the more distant line; and he established in its stead the *agnatic* succession, which was calculated to hinder a fair kingdom from going out of his family. Nevertheless, out of respect to Spanish traditions and maxims, he admitted, in default of all males of whatever line or degree, the succession of females so long as there were any. This was a *semi-Salic* law, which gave the preference to male descendants over all the females and their descendants, although the females and their descendants were of better degree and nearer line. This act was approved in a general

* Garibay, *compendio historial*, etc. tit. i, lib. xviii. I have borrowed this indication from M. Laboulaye, *De la condition des femmes*, p. 496.

assembly of the cortes, and, far from any European power objecting to it, its application appeared to be tied to the provisions of the treaty of Utrecht, as we shall shew further on.*

In 1789, for motives which have remained secret, but which tended perhaps to the establishment of a foreign influence, in Spain, there was an intention of re-establishing the law of the *Partidas*. It then, however, went no farther than a state of proposition. A petition presented to king Charles IV by the cortes, as well as the draught of a new pragmatic on the part of the king, were only printed in 1830, and the *novisima recopilacion*, or official compilation of the laws existing in Spain, published by order of king Charles IV himself in 1805,† reproduced the decree of Philip V, of the year 1713, without any observation or correction.

The constitution of 1812, decreed by the cortes, formally abrogated the *auto accordato* of Philip V, and the return to the laws of the *Partidas* was proclaimed in it. We know that this unexecuted constitution was itself abolished by Ferdinand VII, after the evacuation of the Spanish territory in 1814. From that moment a return was made to the application of the law of 1713.

We know also that on the 29th of March, 1830, Ferdinand VII promulgated the decree projected in 1789 by Charles IV; this new decree was sanctioned by the cortes, and its legality was acknowledged by England, France, and the other powers of Europe.

In was, therefore, to this ancient law of the *Partidas*

* See this act translated into French in the appendix, No. II. The text is in the second volume of the *Novisima recopilacion de las Leyes de España*, p. 4, et seq. Madrid, 1805-29, 6 vols. 4to.

† *Novisima recopilacion de las Leyes de España, dividida en xii libros en que se reforma la recopilacion publicada por el señor don Felipe II, en el año de* 1567, *reimpresa ultimamente en el de* 1775, *y se incorporan las pragmaticas, cedulas, decretos, ordenes, y resoluciones reales, y otras providencias no recopiladas, y expedidas basta el de* 1804. *Mandata formar por el señor don Carlos VI. Empresa en Madrid, año* 1805-29, 6 *vols.* 4*to.*

that the different dynasties which have reigned in Spain owed the inheritance of the crown. In 1496, the heiress of Castille, Joanna the Mad, carried the throne by marriage into the house of Hapsburg, and her son thus joined in one the states of the four houses of Burgundy, Aragon, Castille, and Austria. This son was Charles V. Before the house of Austria, two French dynasties had reigned in Spain, by virtue of the law of succession of females, and a third French dynasty, that of Bourbon, followed in the place of the house of Austria.

§ II. THE HOUSE OF AUSTRIA IN SPAIN.

The establishment of the house of Hapsburg in Spain, dragged that rich and powerful country out of its natural sphere of activity. In fact there is a moral and geographical *cogeniality* between France and Spain, and consequently also in the political system of the two peoples. Spain was civilized by the Roman law, like Gaul. She received through France the commerce and ideas of Europe; although separated by a great chain of mountains, Spain has at all times mixed her races and her destinies with those of France. Her language, of Latin stock like the French language, claims identity with the *langue Romane* of the Middle Ages and with the vulgar tongue still spoken in the south of France. If France has given dynasties to Spain, in their turn the Spanish dynasties have possessed great fiefs in the south of France. France has remained Catholic like Spain, perhaps with a character less exclusive, which arises from the geographical position of the two countries, from the particular genius of the two nations, and from the accidents of their political history. The Spanish law was drawn from the same sources as the French law. Spanish literature has exercised a remarkable influence on French literature, and in their turn the literature and political doctrines of France have caused in some measure a revolution in Spain. The two countries evidently move in the same circle of interests and

ideas, although in different degrees. Their constant friendship is a necessary friendship. France serves as a barrier to Spain against the aggressions of the continent; she receives in exchange a valuable protection for her southern frontier; for, open to the north and to the east, if to these dangers be joined the fears of an attack from the south, her territorial safety is threatened, and her political force in Europe is lessened. The alliance or enmity of the two peoples is for both a cause of peril or of prosperity.

In the eyes of Spain, a French dynasty represented that grand interest of the south, in which she is so deeply engaged. In the eyes of France an Austrian dynasty beyond the Pyrenees was a permanent threat and an intolerable danger. France has struggled during two centuries, with various vicissitudes, to restore the concord which the accession of the house of Austria had broken between her and Spain; she has spared no effort to attain the aim of this policy, now consecrated by three centuries, and always dear to the two nations. Francis I was a prisoner at Madrid; but the grandson of Louis XIV went to reign in the Escurial, and this great event was only the natural accomplishment of the destiny of the two peoples. The cause of Philip V was embraced by Spain as the cause of national independence and prosperity, and public good sense has always shown to France the friendship of Spain as a French interest of the first order.

France was powerfully supported in the pursuit of her private interest, by the interest of Europe itself; for if the house of Austria threatened us by the Pyrenees and by her possessions even on the French territory, where she had a footing by Roussillon, Flanders, Artois, and Burgundy; she also predominated over and weighed upon Europe by her German states, by the Low Countries, by Italy, and by the resources of her rich colonies,—a formidable power, indeed, which the ambitous Charles V dreamt of increasing further, to the great peril of the political liberty of Europe. Bowed down under the weight of

so vast a monarchy, and discouraged by a check which France had given to him, Charles retired from the world and shared his states between two heirs. During his whole reign, France and England had been at the head of the leagues formed against him, yet the struggle had been without success.

Separated from the branch established in the hereditary estates of Austria, the Spanish branch of Hapsburg remained not the less a formidable neighbour for France. She pressed always on the kingdom from three sides. Her exclusive Catholicism gave her a great influence over French Catholicism during the troubles of the Reformation. Philip II, whose influence weighed upon France during several years, attempted even to impose his dynasty upon that kingdom. Everybody knows the glorious resistance of Henri IV, and the energy with which the national feelings declared against this attempt at usurpation. Louis XIII, guided by Richelieu, continued the sentiments of Henri IV, leagued with Holland, Germany, Sweden and Savoy, against the house of Austria, and inflicted heavy blows upon it. England followed the same policy, in supporting the insurrection of the Low Countries. The Spanish house of Austria became insensibly weakened in this struggle; its blood appeared even to degenerate, whilst the house of Bourbon gained in strength and influence what the other lost in vigour and authority. Europe was then divided between the desire of being delivered from the despotism of the one and the fear of undergoing the yoke of the other.

A great juridical phenomenon at this moment made its appearance in the west,—a phenomenon unknown to the ancient world and to the world of the Middle Ages.

The various states of Europe had been led by different circumstances and by the analogous developement of the conditions of their sociability, to frequent intercommunications and to alliances of common interest, whether for the affairs of the reformation, or

for defence against the Turks, or for the commerce of their colonies, or for a more active communication of thought by way of the press, or lastly to resist the abuse of force in certain preponderant powers. The consequence was that these estates formed, in respect to the rest of the world, as it were a single body, in the bosom of which there existed in reality only political separations, and where the tendency to union was continually more sensible and more marked. The feeling of the relations of law rose from the private life of men to the political life of peoples. Nothing is grander, in the history of the progress of mankind, than this labour of Europe upon itself, and the developement of ideas which arose from it. Mind then acquired a power which it had lost since the time of antiquity, and very small states might, by superiority of intelligence, balance the influence which they wanted on the side of force.

Europe was thus pushed by a great community of destinies, of interests, and of opinions, towards a form of political existence which represented the confederation of civilized states of the modern world. This situation gave birth to a system of international policy, established on theories of reciprocal security, having for its object the maintenance of the independence and safety of each state. This system, which may be called European, owed its origin to facts, but it was consecrated by law. It received the sanction given by the force of things, but it obtained also the authority communicated by a powerful manifestation of public feeling. From that time there was a general system of European politics beside the special system of politics belonging to each state.

Thence sprang a law of nations, founded not only on positive treaties, but also on a general and tacit convention, of which the obligatory, though often neglected, maxims exercised a great influence on the acts of governments. Thence the intervention in the political affairs of Europe of a new power to which it was necessary to give due respect—the power of right,

the power of opinion, the power of human intelligence. The right of peoples was supported by the great principles of civil right applied to the right of nations: the right of interior liberty, the right of property or exterior independence, and the faith of conventions; and, since there was not above the peoples a superior justice which could guarantee the safety which a civil police procures in this respect to the citizens of a state, the necessity was felt of establishing and maintaining a political equilibrium of the powers, that is, a system preventive of the abuse of power, by means of the regular division of the forces of the European confederation. From this time the chief attention of the different states was directed to the defence of their independence, internal or external, against the invasions which might result from the exaggerated preponderance of a single state. The conception of this political balance, which was not entirely unknown in ancient times, did not, it is true, beget a perfect security, but it procured the greatest possible security to the nations interested, where they joined prudence and conduct to the force of right.

Under the protection of these great political acts was developed the theory of national sovereignties. By it, each state obtained the consecration of its natural right to govern itself according to its interest and its principles, while it respected the right and interest of others. It was no longer permitted to one nation to interfere in the interior affairs of another for the purpose of intermeddling with its police, with the form of its government, and with the reports between the people and the supreme power. From the domain of juridical speculation, these ideas passed into political practice, thanks to the wise and laborious diplomacy of the seventeenth century, which has transmitted to us the glorious monuments of its works in those famous treaties on which are fixed the bases of European law. But, among the principles constantly invoked in the diplomatic discussions of that time, was that of the right of acting to prevent the immoderate

aggrandizement of a single state to the risk of the general security and independence of the others. The equilibrium of powers and states has pre-occupied all men devoted to the career of politics since the middle of the sixteenth century; and, towards the end of the seventeenth, Fénélon lent to it the forms of an attractive style of writing. The danger which the liberty of Europe, or rather let us say civilization itself, ran under Charles V, has remained fixed in the memory of all.

It was believed in the seventeenth century, and even in the eighteenth, that the equilibrium of Europe ought to be established on an equality of forces and influence between Austria and France. A strict alliance of Spain with France must be the principal means of this distribution of the respective forces. But the reign of the house of Austria in the Peninsula seemed an insurmountable obstacle to this design. France tried to overcome the difficulty by marriages; we shall soon see with how little effect. Richelieu supported the league of the Protestant princes of Germany against the house of Hapsburg. The only aim of the thirty years war was to place Germany in a state of independence towards the emperor, for it was not only in the south that the preponderance of Austria had been threatening, it had excited just fears in the north. Mazarin pursued the plans of Richelieu, and he had the glory of concluding the peace of Westphalia, which terminated the war of supremacy between Austria and Germany, by the triumph of German liberty. This was the first important occasion in which the new ideas, which had prevailed in people's minds with regard to European policy, appear to have been applied. Europe had never seen negociations so great or so complicated.

The Spanish branch was also attacked. It was ruined in the wars of the minority of Louis XIV, and the peace of the Pyrenees was forced upon it. The French frontier was carried, towards the east, to the Rhine; towards the south, to the Pyrenees; and for-

tified on the north by the accession or construction of a considerable line of fortified towns. At length, Louis XIV married Maria Theresa of Austria.

Then began a new phase of the question. The Spanish branch of the house of Hapsburg was, as it were, worn out; gradually degenerated, from Charles V to Charles II, it was approaching to extinction. France, unable to reckon upon a solid friendship with Austrian Spain, carried its views towards the occupation of that kingdom, and Louis XIV, instead of limiting himself to the union of the two peoples, seemed ambitious of effecting a fusion of the two states into one single monarchy. During the fifty last years of his reign, his policy was to establish himself in Spain, entirely or partially, or at least to expel from it the house of Austria. Louis XIV was of the same opinion as the rest of Europe, that a new reunion of the Spanish monarchy to the imperial crown would have compromised the general safety. But the others feared his designs, and they saw in the adjunction of Spain to France another extreme of the question, equally threatening to the equilibrium of Europe. The essential aim therefore of the disinterested part of Europe was to avoid the reunion of Spain either to France or to Austria. The pre-eminence which France had acquired, and which Louis XIV had obtained personally by the greatness of his character and the splendour of his reign, gave, on this subject, a singular force to the apprehensions which were exaggerated by malevolence. They could not, doubtless, impose upon Spain a foreign dynasty against her free will; but they could require the separation of the Spanish and French crowns, the union of which threatened the liberty of Europe.

The maintenance of the equilibrium, which Europe often believed compromised since the peace of Westphalia, was the constant object of public attention, and all the treaties of the seventeenth century had for their object to assure the guarantee of it. To this interest of the political equilibrium was joined, at the same

epoch, an interest of commerce and riches, born of the increasing civilization of the states, and especially of the possession of the colonies of the new world. From that time the commercial interests took their place by the side of the great political interests; and for the maritime powers, such as Holland and England, they became confounded with the political interest; for, with regard to those states, riches and credit were a force which balanced the territorial powers of the kings of the continent. The commercial interest of all the states, and above all of England and Holland, complicated, therefore, the situation of affairs in Europe; it gave birth to new combinations and to unlooked-for complications; but the two interests joined constantly to hinder the reunion of the two crowns of France and Spain on the same head.

§ III. THE MARRIAGES OF LOUIS XIII AND LOUIS XIV.

The great affair of the reign of Louis XIV was the succession to the crown of Spain. It was not merely an affair of family, but it was a national question for the two countries: for France, a question of security, I will say almost of political existence; for Spain, a question of independence and liberty. Spain had perhaps taken an aversion to the house of Hapsburg, which had ruined that country; but the interests of her political liberty and the independence of her crown were especially engaged. They were threatened by the various pretensions of the powers. The claims of the house of France to the succession of Spain proceeded from two sources—the marriage of Louis XIII and the marriage of Louis XIV.

At the death of Henri IV, the regent married Louis XIII to the young Infanta Anne of Austria, to consolidate the peace of Vervins and prevent the war which was on the point of breaking out between France and Spain; the Infanta was made to renounce her eventual right of succession by the contract of marriage passed the 12th of August 1612. The house of Hapsburg, which had been kept from the throne of

France by the Salic law, was unwilling that the house of France should obtain, by an alliance with her, an advantage of succession which the French law had refused to the Spanish dynasty. Independently of the secondary reason of reciprocity which inspired the idea of a modification of the fundamental law on this occasion, another reason, and one still more weighty, urged the house of Austria, and which originated from the great considerations of the political balance which from that time ruled all minds, and the necessity of which had been impressed upon them by the wars of the sixteenth century. The clause of the marriage is very remarkable, for the precision with which it expresses the motives of the renunciation thus imposed and accepted. We call more special attention to it, because it was suppressed in the relation of the contract inserted in the manifesto published by the house of Austria in 1701, after the death of Charles II.*

"Their very Christian and Catholic majesties have desired to make the said marriages, in order the more to perpetuate and assure, by this double tie, the public peace of Christendom, and between their majesties the love and fraternity which is desired by each; and in consideration of the just reasons which show the convenience of these marriages, by means of which and with the favour and grace of God we may hope for fortunate successes for the great good and augmentation of the Christian law and religion, to the common benefit of the kingdoms, subjects, and vassals of the two crowns; and also because it concerns the public good and the conservation of it, *and to hinder the said kingdoms from being united, and to prevent the occasions by which they might be united, as well as to preserve the equality they claim,* it has been accorded and agreed by the present contract that their majesties will hold place, force, and vigour of firm and stable law for ever in favour of their kingdoms and all the commonwealth of each, that the most serene infanta Dona Anne and her children, male or female, or their descendants in whatever degree, are incapable of succeeding to the kingdoms, estates, and lordships which belong to his Catholic majesty, &c."†

The infanta Anne was a minor at the time the marriage was concluded. She faithfully renewed her renunciation after having reached the legal age, and

* See this manifesto in Dumont, viii. part 1, p. 10 et seqq. et infra § iv.

† See the text in the Appendix, No. III.

the king, her husband, confirmed it on his part. Her father, the king of Spain, on the proposition of the cortes, transformed this renunciation into a law of the state, on the 3rd of June, 1619. This law was inserted in 1640 in the *Nueva recopilacion de las leyes de Castilla*, and since that it has been textually reproduced in the *Novisima recopilacion* of 1805.

The only motive of the renunciation of Anne of Austria was to hinder the union of the two crowns on the head of one and the same prince, the king of France. It was not, therefore, as the blood of France that the children and descendants of Anne of Austria were removed from the crown of Spain, but as being direct heirs; and it follows that when this quality of heir direct disappeared, the exclusion, having no further motive, fell to the ground; and this is proved by the interpretation given to it by a king of Spain (Charles II), in his will dated 1700, of which we shall speak hereafter; as well as by the fact that in 1713 a new renunciation was demanded of the Duke of Orleans, grandson of Anne of Austria, when they might have been contented with that of his grandmother, the primitive validity of which had never been contested by the house of France.

From this epoch of 1612, then, begins a system of projected friendship between the two countries,—a friendship connected by marriages, but with the declared condition that the union should not go so far as to place the two crowns on the head of one prince. The necessity which had been felt to draw closer the bond of the two states is declared; but it stops short before the possible union of the two kingdoms. The house of France must be allied to the Spanish throne, but the king of France must not sit upon it. In the final reality, nothing but the king of France is excluded from the Spanish crown. Such is the evident sense of the treaty of marriage, and such the limit of its bearing. The rest is but a flourish of phraseology, a lawyer's form, of which all the sequel of this great affair is a clear and evident demonstration.

It will be said, perhaps, that, in this view of the case, the exclusion of the daughters of the Infanta had no motive. The objection is easily answered, for, on one side the house of Spain did not recognize the Salic law, since she had recently attempted under the League to succeed to the throne of France by a female claim; and, on the other side, the house of Austria chose to place itself, in face of that of France, in an exact condition of reciprocity with respect to the advantages of successibility. Therefore, all the other cases, other than those of the direct succession through queen Anne, remained under the ordinary law; and the princes of the house of Bourbon, descendants of Anne of Austria, remained, in respect to an infanta of Spain, in the condition of other foreign princes who might be suitors for the hand of the heiress of the Spanish crown. They were not excluded by reason of race; they were excluded, if it so fell, by a reason of state, limited in its sphere, on account of their relationship to the crown of France, and when they found, in their origin itself, a simultaneous claim to this latter crown and to that of Spain; but they were not excluded when they were called by another title than that of an heir of France.

It is important to fix at once the meaning of the renunciation of Anne of Austria, for rival ambitions have long wished to give to that act a character which it does not possess, that of an exclusion of family and of an incapacity by birth of the blood and name of France. It is the blood of France altogether, said the house of Hapsburg, in a manifesto of 1701, *it is the blood of France which is excluded from the throne of Spain.* This manifesto became that of the coalition itself, at a certain epoch of the war of the succession; but, ten years later, the treaty of Utrecht proclaimed Philip V, grandson of Anne of Austria, legitimate king of Spain.

Conditions nearly the same as those of the marriage of Louis XIII, were inserted in the contract of marriage of Louis XIV with Maria Theresa of Austria, on

the 9th of November 1659, in which we find the following passages :—

"Art. 2. That his Catholic majesty promises and remains obliged to give and shall give to the most serene Infanta the lady Maria Theresa, in dower and in favour of her marriage with the very Christian king of France . . . . the sum of five hundred thousand *écus* of gold, or their just value, in the city of Paris.

"Art. 4. That *in consideration of the effective payment made to his very Christian majesty, of these five hundred thousand écus of gold . . . . the said most serene infanta shall hold herself satisfied of the above-mentioned dower, and shall not hereafter be able to allege any claim . . . . . on account of the inheritancy and greater successions of their Catholic majesties,* her father and mother . . . seeing that . . . she is to remain excluded from them; and, before the marriage be carried into effect, she shall make a renunciation of it in good and due form.....

"Art. 5. That inasmuch as their very Christian and Catholic majesties are come and come to make the marriage, in order the more to perpetuate, by this knot and bond, the public peace of christendom, and, between their majesties, the love and fraternity which each expects in them; and in contemplation also of the just and legitimate causes which show and persuade the equality and fitness of the said marriage . . . . *and also because it touches and concerns the good of the commonweal and conservation of the said crowns, that being so great and powerful they be not reduced into one, and from the present time the occasions for such a junction be prevented.* Wherefore...their majesties agree and decree by contract and convention passed between them...that the most serene Infanta of Spain, the lady Maria Theresa, and the children begotten on her, whether male or female, and their descendants .... in whatever degree, for ever, cannot succeed to the kingdoms, states, lordships, dominations, which belong and shall belong to his Catholic majesty."*

There was in this contract, as in that of 1612, not only a view to the interests of the European states, but also the expression of a sentiment of Spanish dignity. Nevertheless, we must acknowledge that, if we may reproach Louis XIV with the ambition of joining together the two monarchies, his desires were singularly provoked by the very negotiation of the marriage and by the circumstances which accompanied it.

Maria Theresa was the eldest daughter of the king of Spain, and the health of her two brothers was deli-

* See the entire act in the Appendix, No. IV.

cate. The curious documents which M. de Lionne has left relating to the peace of the Pyrenees, of which he was one of the negotiators, show us that the renouncement of the crown of Spain was warmly contested between the Spanish plenipotentiaries and those of France. The latter were opposed to it, and they accepted it only with restrictions. First, there was an expressed correlativeness between the payment of the five hundred thousand écus and the renunciation; next the tacit convention not to pay the dower, in order to leave the royal husband the right to demand the cancilling of the clause; finally, the assurance given by Don Louis de Haro, that if *the crown of Spain should lose the two young princes then living, there would be no subject of their monarchy, who, in spite of all the renunciations that they could require of the infanta, would not still look upon her as their veritable queen . . . because*, said he, *a simple article of a treaty cannot destroy the fundamental maxims of a monarchy, &c. . . . and that, although he knew better than anybody all these truths, still he was not bold enough to dare to propose in the councils of Spain the desisting from this renunciation . . . after the so formal example of the last marriage of an infanta with a king of France.**

On which M. de Lionne informs us *that these considerations having been represented to the king, his majesty, willing on one hand to give peace to christendom, and seeing on the other hand the nullities of this renunciation, pointed out even by the chief minister of Spain*, this point was yielded, as the Spaniards desired, and the renunciation was signed, with the belief that it was a mere satisfaction of a susceptibility on the part of Spain. This is what results from the relati of M. de Lionne, only a few months posterior to the treaty of marriage.

Be this as it may, the queen Maria Theresa signed,

* See M. Mignet, Négociations relatives à la succession d'Espagne sous Louis XIV, tom. i. p. 43 et seqq.

in execution of the contract, an act of formal renunciation of the crown of Spain, on the 2nd of June, 1660, before leaving Spain. In this act,—digested with such a prodigious luxuriance of protectional and prohibitive clauses, that we may believe that the art of the notaries exhausted in it all the resources of the style used on such occasions,—we find the determining motive of the renunciation reproduced; *for the common benefit of the kingdoms, subjects, and vassals of the two crowns; bearing in mind how it concerns the public state and their conservation, that being so great they should not happen to be joined, and that provision be made against the occasions which there might be to join them.**

The act of marriage of Louis XIV, and consequently the renunciation, as well as the political motive given for it, make an integral part of the treaty of the Pyrenees,† of the 7th of November 1659. But the marriage was celebrated at Bayonne, only on the 9th of June, 1660.

One circumstance is here particularly worthy of attention, namely, that the dower of 500,000 écus of gold was to be paid—one-third on the day of the celebration of the marriage, the second third a year after, and the last third in the six following months; but, as though Spain had intended to give authority to the insinuations made by Don Louis de Haro, in the isle of Faisans, she paid not a farthing of the dower, either on the day of the celebration, or in the next year, or at any other time. Thus Louis XIV and the Queen, who were expressly, according to the terms of the contract, to renew their solemn renunciation after the celebration of the marriage, abstained from doing it; and, as early as 1661, Louis XIV sent an ambassador extraordinary to Madrid to obtain of his father-in-law, king Philip IV, the formal revocation of the act of renunciation, considering himself as no longer bound

* See this piece, *in extenso*, in the Appendix, No. v.

† See Dumont, *Corps diplomat.* tom. vi. part 2, p. 284, and tom. viii. part 1, p. 16.

by it on account of the non-execution of the conditions attached to it.* A Spanish minister replied to the king's envoy that the renunciation was rather a style of contract than an obligation which carried any effect.

The negociation went on slowly on account of the respect which Louis XIV thought it necessary to show towards the court of Madrid; and it ended in an abortion, after the birth of a son, in whom Philip IV centred his affection and hopes; but Louis XIV never considered himself as bound by a renunciation which, in his opinion, wanted the complement of execution and formality which was necessary for the formation of a political and obligatory bond.

Things were in this posture, when Philip IV died, the 17th of September 1665, leaving as his heir a child of four years of age, whose feeble health did not give promise of a long existence. After the example of Charles V and of Philip III, Philip IV regulated the right of succession to the crown by his will, in which we find the following clause:—

"In all past times and ages, an especial circumspection has been used in making marriages of the infantas of Spain with the kings of France, on account of the inconveniences which would result from the conjunction and union of those two crowns.....to avoid which, and *to facilitate marriages between the two crowns, for the utility of the reciprocal vassals, and of the states in general, their union has been hindered by a convention. . . . . To this effect, the infanta, my sister, was made to renounce . . . . for herself and her descendants the succession to my kingdoms.*

"Following this example.....the chapters 5 and 6 (produced above) were added to the treaties contracted by me and by the very Christian king Louis XIV.....touching the peace and marriage contracted between the infanta Maria Theresa, my very dear daughter, and the said king.....

"As father and natural master of my kingdoms ..... *in order to avoid the damages which might result from the conjunction of the two crowns*.....I declare that the said infanta Maria Theresa, my daughter, and all her descendants by this marriage...shall be, shall remain, and are, excluded...from succeeding in my kingdoms...for ever, *just as if they were not born.*"†

* See the work of M. Mignet already cited, tom. i. p. 71 et seqq.

† See this act in Dumont, loc. cit. tom. viii. part 1, p. 25, 26.

The only heir male of the Spanish branch of Hapsburg having a health so precarious, and a vacancy in the succession being probably near, Louis XIV thought justly that the validity of its renunciation not being only a question of private right, between Spain and himself, but a high question of political equilibrium, which he ought to treat with Europe rather than with an infant king, he immediately opened negotiations with Austria, England, Holland, Bavaria, and Savoy. Despairing of obtaining the whole Spanish monarchy, he would at least be admitted to share in its possessions; aggrandize the territory of France, in default of obtaining a second crown for himself.

Austria had eventual claims to the crown of Spain, through Maria Anne of Austria, daughter of Philip III, and mother of the emperor Leopold. But these claims were preceded by those of Bavaria, which came through Margaret, younger sister of Maria Theresa, wife of the emperor Leopold and mother of Marie Antoinette, married to the elector of Bavaria. Spain and Europe were favourable to the house of Bavaria, which excited no umbrage. The dukes of Savoy had claims in a more distant degree, which they deduced through the infanta Catharine, sister of Philip III, duchess of Savoy, and from an open substitution in their favour by the will of Philip IV.

Holland and England had in the question only political and commercial interests. But these two interests were of a singular importance, and Louis XIV was desirous of satisfying them. In the political point of view, it was the interest and equilibrium of Europe which prepossessed the cabinets, and especially the maritime powers. This interest was compromised, if Austria or France obtained the vast domains of the Spanish monarchy, and the fruit of the war of thirty years was lost; the balance, so painfully established by the treaty of Westphalia, was destroyed.

In the point of view of private interest, England and Holland were equally threatened. England, the old ally of the house of Austria, had obtained a footing

through her in Spain. She feared to lose a market for the produce of her manufactures, by the establishment of a French prince in that country. Moreover, France possessed an imposing fleet; united with that of Spain, it might then shut up the Mediterranean, and annul the commerce of the other peoples of England with both Indies; and then, the occupation of the Spanish Low Countries by France closed upon the English the road of central Europe. Now the continental interest of England seemed, for more than a century, to have been concentrated in the Low Countries. Elizabeth had supported them in their insurrection against Philip II; Cromwell had aimed at possessing the coasts of those countries; and William of Nassau had strengthened the English influence there.

For Holland, the barrier of the Low Countries was a bulwark against France; and, in its turn, France had long coveted the Low Countries, which seemed to be a natural complement of its territory, in an age when every state was seeking natural boundaries. If she had to undergo the threat of the Pyrenees, she would at least have the protection of the Rhine. It was by the Low Countries that Spain weighed directly and heavily upon France, open to attack on that side of her frontiers. Thus, the question of the Low Countries was that which offered most difficulties in this affair, because the direct interests of three powers were implicated in it.

The impatience of Louis XIV had nearly compromised everything. He pretended first that the Belgic provinces, where the right of civil devolution was admitted by custom, belonged to the queen Maria Theresa, as daughter of Philip IV by his first marriage; transporting thus into political regulations a law of succession which had till then governed only domestic patrimony. A war followed, which was terminated, after a short duration, in 1668, by the peace of Aix-la-Chapelle; but it left in existence prepossessions and umbrages, for it discovered a too marked eagerness on the part of France, and a strong desire

of aggrandizement. It was, however, at this epoch that a secret treaty was made relating to the future partition of the Spanish states; in this treaty, Austria consented to the reunion of the Low Countries with France. It does not appear that Holland and England ever agreed to this concession, the offer of which was never renewed, nor the demand accepted. The emperor Leopold seemed then to acknowledge himself the invalidity of the renunciations of Maria Theresa.

The treaty of Aix-la-Chapelle, in 1668, had left in the power of Louis XIV twelve strong towns of the Spanish Low Countries. He gave up Franche-Comté, but only to take it back shortly afterwards during the war with Holland: he retained possession of it by the treaty of Nimeguen in 1678; it was the anticipated dismembering of a declining monarchy. The war with Holland had been glorious for our arms, but it alarmed Germany, as the war of devolution had alarmed Holland; it ruined the French party in the United Provinces, and raised implacable resentments, of which Louis XIV felt subsequently the vexatious effects.

After the peace of Nimeguen, came the affair of the chambers of reunion; a bold enterprise, the object of which was again the territorial aggrandizement of France. Louis XIV had already lost the friendship of Holland and Germany; he now saw dissolved, by the league of Augsburg, French alliances which dated from the time of Henry IV, and soon the great league of 1689 joined England to the coalition. England had just made the revolution of 1688, and William III, the personal enemy of Louis XIV, directed its policy and forces.

The great league had the double aim of humbling the power of Louis XIV and of hindering a prince of France from ascending the throne of Spain. The question was now no longer a mere objection to the union of the crowns; it was determined to exclude the whole house of Bourbon from the Spanish throne, without regard to separation or union. The question had ceased to be one of equilibrium or of political

interest between the two peoples; it had taken the character of a war of family against family. The house of Hapsburg again wrestled body to body against the house of Bourbon. The ardour of William III animated the coalition, and one of the articles of the treaty assured the Spanish monarchy to the emperor and to his posterity, to the exclusion of the house of France.* This war lasted nine years, and ended with the peace of Ryswick, in 1697. It marked the period when the ascendant movement of French prosperity was arrested.

However, the league of 1689 was now dissolved, and Louis XIV resumed his old projects of partition of the Spanish monarchy; but he no longer found as favourable dispositions as in 1668. It was no longer possible to come to an understanding with the emperor; Louis XIV came to an understanding with Holland and England. The prince of Bavaria was to have the royalty of the Peninsula, the Low Countries, and the Indies; the dauphin of France, the kingdoms of Naples and Sicily, with the ports of Tuscany, the marquisate of Final, and Guipuscoa; the Milanese was offered to the archduke Charles. This treaty is of the 11th October, 1698.†

The electoral prince of Bavaria dying in 1699, a new treaty of partition was necessary. The same powers which had made that of 1698, concluded that of the 25th March, 1700, which went nearer to satisfy all the interests, since the houses of Austria and France remained henceforth alone in presence, to dispute the principal lots of the inheritance. The archduke Charles was substituted for the prince of Bavaria; and France was to have in addition to her first share, Lorraine and Bar, in exchange for which the house of Lorraine would have had the duchy of Milan.

The house of Hapsburg was thus to form a second Spanish branch, and the equilibrium of Europe rested

* See Dumont, loc. cit. tom. vii. part 2, p. 230.

† See Dumont, loc. cit. tom. vii. part 2; and the *Mémoires* of Lamberty, tom. i. p. 12.

on the same basis as formerly. The successibility of the house of France to the Spanish crown was not prohibited, but it was said that *the sovereignty of Spain and the Indies should never appertain to a prince who should be at the same time emperor or king of the Romans, king of France or dauphin.** This article of the treaty of 1700 is worthy of remark, as explaining admirably well the meaning of the renunciations. The *houses* are not excluded, but only the sovereigns and heirs presumptive of Austria and France. During this period, from the marriages to the death of Charles II king of Spain, the question passed, as we see, through different phases, and from one extreme to the other. We shall see these vicissitudes reproduced until the moment of the definitive solution. It is not, in fact, at once, that we arrive at the just measure and truth in political affairs, as in the other affairs of mankind. Truth only acquires its predominant force by that slow and painful elaboration which shows in detail the dangers and vices of error. The single interest of France was to convert Spain from a hostile territory to a friendly territory; the single interest of Europe was to avoid the union of the two crowns; but an operation so simple in appearance, became complicated with all the great passions which agitate empires.

§ IV. THE WILL OF CHARLES II.

The partition of March 25, 1700, excited earnest reclamations. Louis XIV negociated to obtain the approbation of the parties interested. The most dissatisfied were, the emperor, who had received in 1689 the guarantee of the Spanish succession, and the king of Spain, whose states were divided during his lifetime without deigning to consult him. The irritation of Charles II was extreme when he learnt the partition of 1698; it was at its height when he was informed

* See the treaty in Dumont, loc. cit. p. 477; comf. Lamberty, *Mémoires*, tom. i. p. 97, and Mably, *Droit public de l'Europe*, tom. ii. p. 63.

of that of 25 March, 1700. He had made a first will by which he constituted the electoral prince of Bavaria his universal heir, in order to punish the emperor, who had wrested from the empress Marie Antoinette a renunciation of her rights; but he had had the weakness to destroy this act, at the solicitation of Austria. He re-established his testamentary dispositions when he was made acquainted with the treaty of partition of the year 1698. The unforeseen death of the prince of Bavaria, in 1669, threw him into a great embarrassment. After having long hesitated, the national sentiment, loudly pronounced in favour of the house of France, gained the better in his heart over the resentment which he might cherish against Louis XIV for provoking the partitions which had offended him, and over the family affection which carried him towards the house of Austria. He consulted the most influential men of his kingdom, as well as the pope, and then made, on the 2nd of October, 1700, a will of which the following were the most important clauses:—

"Having remarked, in conformity with the result of all the consultations held by our ministers of state and justice, that the reasons for which the infantas lady Anne and lady Maria Theresa, queens of France, my aunt and sister, have renounced the succession to these kingdoms, *were only founded on the danger and prejudice which this kingdom would incur, if it should chance to be united with that of France; and having considered that the fundamental reason no longer subsisted, the right of succession having devolved on the nearest relation, according to the laws of this kingdom, and that this case is now verified in the person of the second son of the dauphin of France;* therefore, conforming myself to the said laws, I declare for my successor, if God take me away without leaving children, the duke of Anjou, second son of the dauphin; and in consequence of that, I establish and name him to succeed in all my kingdoms and states, without excepting any of them.

"I command and order all my subjects and vassals of all my kingdoms and states, that, the case happening that I die without leaving children, they recognise and receive him for their king and natural lord, and that without delay they put him actually in possession of those, provided that he make and take the usual oaths to observe the laws, ordinances, and customs of my said kingdoms and states.

"And, *my intention being that, for the good of my subjects and for the peace of Christendom and of all Europe, this monarchy be for*

ever separated from the crown of France, I declare that if the duke of Anjou should happen to die or to be called to the succession of France, preferring the enjoyment of that crown to that of Spain, then the succession of the monarchy shall be under the same conditions, devolved to the duke of Berry, third son of the dauphin; and in case the duke of Berry should die or inherit the crown of France, I declare and name to the succession the archduke, second son of the emperor my uncle, *excluding, for the same reasons and for the same inconveniences, contrary to the interests of my subjects, the eldest son of the said emperor my uncle.*

"And in case that the archduke should also die, I declare and name to the said succession the duke of Savoy and his children. And it is my will, that this be executed by all my subjects in the manner that I ordain; for it is expedient for their good that they suffer not the monarchy to be divided or diminished, but that it remain in the same state in which my ancestors have gloriously established it.

"And, as I have much at heart and wish uniquely the maintenance of the peace and union so profitable to christendom, between the emperor my uncle and the very Christian king, I pray and exhort them that this union be more firmly cemented by the bond of marriage between the duke of Anjou and the archduchess, in order that Europe may enjoy the repose which is necessary for it."*

Charles II died on the 1st of November, 1700, twenty-nine days after having made this will, which surprised everybody, and Louis XIV himself. The Spanish interest had simply prevailed over the Austrian interest in the mind of the dying king; but England and Holland believed that they had been tricked. This will made an unexpected and forced alteration in the position of the powers, and of Louis XIV in particular. Louis knew that the general opinion in Spain was favourable to the house of France; but, as this opinion was shown with a certain degree of circumspection, he had believed that the safest way would be that of partition, not doubting that the Austrian party which surrounded the king would determine his choice for a prince of the house of Hapsburg.† The treaties of partition, without doubt, had for result neither the union of Spain to France, nor the foundation of a French dynasty

* See Dumont, *Corps diplomat.* tom. viii. part 1, p. 90.

† See the *Mémoires* of M. de Torcy, and the *Hist. de la diplomatie Française*, of M. de Flassan, tom. iv. p. 196 et seqq.

beyond the Pyrenees, but they increased the territorial power of France and its preponderance in Europe; they hindered the reunion of the Spanish crown with the imperial crown, and Louis XIV showed himself satisfied. If he did not gain the Low Countries, he obtained a kingdom in Italy.

The French Cabinet, therefore, experienced great embarrassment when the will of Charles II arrived on the 9th of November, at Fontainebleau, where Louis XIV was at that moment. We may read, in the Mémoires of M. de Torcy, the recital of the invincible state reasons which decided the monarch to accept it. The following note was communicated immediately to the ambassadors of Holland and England:—

"The state of affairs is entirely changed by the will of the king of Spain. If the princes of France refuse the crown after the Catholic king has rendered justice to M. le Dauphin, in calling to it the princes his sons, the subjects of that monarchy will consider it a duty to obey the archduke, and to acknowledge in his person the dispositions of the king their master. They will all be as faithful to him as they have been for so great a number of years to the preceding king of Spain. It will be necessary to conquer, not only places, but states, entire kingdoms, to execute the treaty. To undertake a long war against the monarchy of Spain reunited in all its parts, sustained by allies interested in maintaining the will, submitted to a king whom she will regard as legitimate, the first heirs having renounced their rights: nothing is more opposite to the spirit of the treaty of partition, nothing more contrary to that happy tranquillity which it has been the object of the king to maintain, conjointly with his allies.

"When his majesty accepts the will, the monarchies of France and Spain remain separate, as they have been for so many years. That equal balance, desired by all Europe, subsists much better than if France aggrandized itself by the acquisition of the frontiers of Spain, by that of Lorraine, and by that of the kingdom of Naples and Sicily. His majesty is persuaded that it gives a striking proof of his moderation in renouncing the great advantages which his crown received from such a treaty, and that the resolution he has taken to preserve the monarchy of Spain in its ancient lustre is still more in conformity with the general interest of all Europe."*

The will of Charles II was in truth but the legal expression of the independent will of a sovereign

* See M. Mignet, loc. cit. Introduction.

state. It was accepted as such by the assent of the Spaniards. It thus introduced by the side of the question of the law of nations, already pending and relative to the reunion of the Spanish crown with another powerful crown, whatever crown it might be, a question of national liberty no less grave in the point of view of the *droit public* of Europe, and no less serious for the intimate interest of all the independent states. According to the Spanish constitution, the king was the sovereign legislator; and the states, the cortes, confirmed by their imposing authority this delegation of the national power which the king then drew from the right of blood. It was, therefore, the nation itself which, by the will of the defunct king, elected the Duke of Anjou king of Spain. It was unjust to impose upon Spain another sovereign. Europe in coalition could perhaps dispose of a sufficient force to accomplish this design, but the right was against Europe; and by an admirable effect of the laws of Providence, it happens rarely that force prevails against right. This was nevertheless the work which an ill-inspired coalition undertook, and right did prevail against force. The cause of the free choice of Spain, the cause of the sovereignty of an independent state, triumphed, at the same time with the cause of the European interests, by an equitable combination of the rights of all.

Let us follow the march of facts until their *dénoûement.*

Louis XIV having decided upon the acceptation of the will, Philip, duke of Anjou, was proclaimed king. He was received with enthusiasm by the Spaniards, who saw in him the prince of their choice, and not a master imposed by strangers.* At Naples alone the taking of the oath of fidelity experienced some delay, raised by the partizans of the house of Austria. Philip V made his solemn entry into

* See Flassan, loc. cit. p. 209, and M. Mignet, loc. cit. Introduction.

Madrid on the 14th of April 1701. The greater part of the powers of Europe, such as the Italian states, Sweden, England, Holland, and the northern powers, continued their pacific relations with France, and recognized by their silence the new king. The king of Portugal and the duke of Savoy even concluded treaties of alliance with him.* Everybody seemed at first to have taken his resolution on events that were accomplished, except the emperor of Austria; but several new facts compromised the situation.

Louis XIV, in placing the crown on the head of his grandson, had said, *Il n'y a plus de Pyrénées.* The saying was noble and great; Europe had appeared to accept it in the political sense which it offered, but she received it not in its too positive reality. England and Holland furnished Spain with immense supplies of their manufactures; those of France soon supplanted them in this lucrative commerce.† The old laws of Charles V prohibited all foreign ships from entering the Spanish colonies; not only did Louis XIV cause his fleet to occupy the principal stations of the Spanish Indies, but a treaty concluded on the 17th of August, 1701, opened to the commerce of France a door which remained shut to the other maritime powers of Europe, and granted to the Guinea company the *assiento*, or privilege for the introduction and sale of negro slaves in South America.‡ A French squadron occupied the port of Cadiz. This injury to commercial interests was already much, and it was only necessary to join to it acts of political hostility and manifestations that threatened the equilibrium of Europe.

* See the *Mémoires* of Lamberty, tom. i.; Dumont, loc. cit. tom. viii. part 1, p. 6-31; and Koch, *Tableau des révolutions de l'Europe*, tom. ii, p. 23 (ed. 1823.)—See also Mably, loc. cit. tom. ii, p. 78.

† See a very curious book, published in Holland, under the following title :—*Raisons qu'a eues le roy très-chrétien de préférer le testament de Charles II au partage de la succession d'Espagne, les avantages qui lui en reviennent, avec les intérêts des princes de l'Europe dans un si grand évènement.* A Pampelune *(Holland,)* 1701, small 12mo.

‡ See Dumont, loc. cit. p. 83.

James II having died at St. Germain, on the 10th of November, 1701, Louis XIV immediately recognized the prince of Wales, his son, as king of England, Scotland, and Ireland. William III, considering this recognition as a direct injury and a withdrawal of the recognition which he had obtained at Ryswick from Louis XIV himself, recalled from Paris his ambassador, the earl of Manchester. The English nation showed itself irritated, and Louis XIV, who thought that he was only imposing on William III by a threat, communicated to the foreign courts a note explanatory of his conduct.* M. de Torcy expresses regrets on the occasion of this compromising recognition.

Towards this time Louis XIV sounded the court of Madrid on the proposition of ceding to France the Low Countries,† and this step having proved fruitless, he caused to be occupied by the French troops, without notice and on the same day, all the places of the Low Countries of which the Dutch had the keeping, in virtue of the treaty of Ryswick, and by the title of *barrier*. The Dutch evacuated the Low Countries; but this sudden invasion, which was only grounded upon their future and presumed enmity, was the cause that a new project of joining those countries to France was imputed to Louis XIV.

Finally, by letters patent of the month of December 1700, Louis XIV had formally declared that he preserved to his grandson the right of succeeding, in his degree, to the crown of France.‡ This was a violation of the testament of Charles II, its aim being to unite the two monarchies on one head, and thus threaten the equilibrium of Europe. The king said, a few days before, to the constable of Castille: "*The French and Spanish nations shall be so united, that the two henceforth shall form but one.*"§ It was to be feared

* See Flassan, loc. cit. tom. iv. p. 210 et seqq.

† See Flassan, loc. cit. 226.

‡ See Dumont, tom. vii. part 2, and tom. viii. part 1, p. 325.—Lamberty, tom. i. p. 388.

§ Flassan, loc. cit. p. 209.

that these magnanimous and affectionate words would take one day too literal a signification.

It was difficult to justify the letters patent of December 1700; but the aggression of Louis XIV in Holland might be explained by a prudent and even necessary precaution, caused by the armaments and defensive alliances of several foreign powers, who, though still hesitating, were nevertheless putting themselves in a position to resist or to attack. Some negociations were opened to avoid the war which was on the point of breaking out; but they were useless. The irritation of the house of Austria, deceived in its hopes; the resentment of William III; and the rancour of the states of Holland, recently humiliated by Louis XIV, prepared a threatening coalition.

On the 20th of January 1701, England, the United Provinces, and Denmark, signed a sort of defensive alliance, grounded on the changes *which the affairs of Europe had undergone by the death of the Catholic king.** In September 1701, another treaty was concluded between Austria, England, and the United Provinces: first to procure for Austria *satisfactionem æquam et rationabilem* on account of the succession of Spain; 2nd, *ad removendam Galliam a Belgio fœderato;* 3rd, *ad commercia favenda.*† There was a separate article relating to the recognition of the prince of Wales by the king of France, *qui gravem injuriam et indignam universæ nationi (Britannicæ) intulit.*

In the month of June, 1701, the house of Austria had published a manifesto, in which she argued the renunciations of Anne of Austria and Maria Theresa to establish the incapacity of inheriting under which the duke of Anjou laboured.‡ She made pretensions in her turn to take the inheritance of the crown of Spain and to join it to the imperial crown. She re-

* See Dumont, tom. viii. part 1, p. 1.
† See this act in Dumont, loc. cit. p. 89.
‡ See this act in Dumont, tom. viii. part 1, p. 10 et seqq.

fused to Charles II the right of repealing an incapacity of succeeding, while acknowledging in Philip IV the authority to establish it, and inferred the annulment of the will which gave the crown to Philip V, and the exclusion of *all the blood of France** from the entire succession of Spain. This was still the system of family antagonism which the league of 1609 had embraced for a moment, but which, after political anger had been appeased, the good sense of the cabinets condemned at Ryswick.

The exaggerated claims of the house of Hapsburg were not likely to be more palatable to Europe than the supposed designs of Louis XIV. They suspended for some time the conclusion of an *offensive* league. Austria prepared for the struggle by great sacrifices. To obtain troops she recognized the king of Prussia; and to have money, she gave a footing in the empire to the house of Hanover, in favour of which a ninth electorate was created.†

The circles and princes of the empire acceded to the alliance of September 1701, by posterior acts, beginning only with the 22nd of March 1702.‡ Prussia had promised troops in the preceding January and December.§ Portugal only joined the coalition on the 16th May 1703; the duke of Savoy, later still, at least ostensibly, towards the end of the same year 1703.‖

The manifesto of the United Provinces and their declaration of war were published in the month of May 1702.¶ Their expressed grievances are—a sort of incorporation of the Spanish low countries with the French monarchy, and the designs of Louis XIV, which aimed at universal monarchy. The declaration of war of England was not retarded by the death of William III. That of the emperor Leopold appeared a few days after, on the 25th of May, 1702. Louis XIV

* See Dumont, loc. cit. p. 24.

† See Dumont and Flassan, loc. cit.

‡ Ibid. loc. cit. pp. 114, 116, 121, etc.

§ Ibid. p. 96. ‖ Ibid. p. 127.

¶ Ibid. loc. cit. p. 135.

replied by a declaration* dated the 3rd of July, which was followed by that of the circles of the empire, on the 28th of September.† Bavaria had remained faithful to Louis XIV, her old ally, for which the elector was subsequently placed under the ban of the empire.‡

The war with Austria had begun in Italy as early as 1701. It was carried on languidly in Flanders and on the Rhine in 1702. The coalition had a very decided aim for hindering, but it had no determined motive for acting. The only aim at this moment of the parties to it was to hinder the union of the crowns of France and Spain, and to dismember as much as they could from the latter monarchy; but it did not go so far as to aim at dethroning Philip V, who, acknowledged and supported by the Spaniards, seemed to hold an inexpugnable position. The confederates, moreover, had as yet no serious candidate for the throne of Spain. The object of the coalition is exactly defined by article 8 of the grand alliance, thus expressed :—

"*If war becomes necessary*, no one of the parties shall treat for peace before communicating and conferring with the other confederated powers, and first obtaining for his imperial majesty a just and reasonable satisfaction, for Great Britain and the states of Holland the particular security of their states, provinces, possessions, commerce, and navigation; and before having stipulated a positive guarantee that the kingdoms of France and Spain shall never fall under the same domination, and that they shall not be joined under the same head; and especially that the French shall never take possession of the Spanish Indies, that they shall not have the exclusive commerce of those colonies, and that the rights of commerce and navigation which shall be accorded to them shall be exactly the same as those allowed to Great Britain and to the states of Holland, &c."§

It was, therefore, rather the acts of Louis XIV, since the death of Charles II, that were attacked, than

* See Dumont, p. 112, et seqq.
† Ibid. p. 115, 118, and 120. ‡ Ibid. p. 127 and 193.
§ See the text of the treaty, in the Appendix, No. v.

the legitimacy of the succession of his grandson. This point is very important, because, in another period of the war, the question changed face entirely for the confederates, from the effect of the exasperation of the struggle, and the substitution of personal passions for the interests of the states. The grand alliance would not declare war against a family, *against the blood of the Bourbons*, nor against Philip V king of Spain, but only against Louis XIV, suspected of nourishing designs contrary to the general security of Europe. The word *family*, or *house of France*, or the name of the duke of Anjou, are not pronounced in the enacting clause of the act of confederation of the 7th of September 1701; and, on the contrary, the engagement to maintain the separation of the two crowns, carried with it the tacit recognition of the right of Philip V to reign in Spain. The confederates then held themselves within the spirit and letter of all the public acts which had emanated, during two centuries, from the political powers of Europe; and especially within the spirit and letter of the Spanish marriages of the kings of France, and of the wills of the kings of Spain, which had all aimed at the alliance of the two families and the profound friendship of the two countries, but not at their incorporation in a single monarchy.

There was, therefore, among the confederated powers two distinct interests, which, according to the event, predominated in the acts; a personal interest of the house of Hapsburg, which excluded all accession of the house of France in Spain, and a purely European interest which limited its aim to prohibiting the reunion of the two crowns on the head of a Bourbon. It was this last interest, the long consecrated interest of Europe, which the coalition, by its ostensible acts and its manifestos, seemed only to pursue in this first period. Thus we perceive a language altogether different in the declarations of war of the emperor, and in those of England and the United Provinces: in the latter the king of Spain is implicitly recognized; in

the former his very title is attacked.* It is, therefore, evident that, although united in appearance, the sovereigns of the coalition had different views; they even acted separately, which is shown by the diversity of interests and intentions. The aim of the war was evidently exceeded by subsequent exaggerations.

Thus the object of the coalition was not exactly conformable to the hopes and personal ambition of the emperor Leopold. The desire of again reuniting, in his posterity and on a single head, the states of Charles V, had induced him to impose on his daughter of Bavaria† a renunciation which had irritated Spain and its king. Persisting in this intention, he refused to accede to the partition of the 25th March 1700, which realized to the profit of his race the separation of the crowns which the will of Charles II had since operated to the profit of the house of France. His obstinacy compromised the successes of the coalition. Wise counsellors decided him to give up these ideas. In fact the coalition which attacked in Louis XIV the sovereign it accused of wishing to unite the two crowns, would have acted inconsistently in upholding Leopold, who proposed also to accomplish a union which would have threatened in the same degree the equilibrium of Europe.

When the emperor had been prevailed upon to yield this point, there was a closer union between the confederated enemies of Louis XIV. They formed on the 16th of May 1703, a new alliance, offensive and defensive, by which they acknowledged a son of the emperor for king of Spain under the name of Charles III. Leopold, in fact, yielded the Spanish monarchy to his younger son, the archduke Charles, the same to whom the treaty of partition of March the 25th, 1700, had destined the crown of Spain. This act of cession is of the 12th of September 1703, and consequently posterior by more than a year to the declarations of

* See these two acts in Dumont, loc. cit.

† See page 22, *supra*.

war of the coalition. The following is a translation :—

"Leopold, emperor of the Romans, ever august, &c., we make known that:

"By the death of the very high and very powerful prince Charles II, king of Spain and of the Indies, our brother and nephew, all the states and kingdoms of his domination being devolved to us by hereditary right, we have seriously reflected on the difficulty there was for one and the same prince to govern kingdoms so distant at the same time as our hereditary states, especially at this time and in the manner which the good of our peoples and the common interest of Europe require. Besides that, we have considered that, the affairs of Spain being such as to require the continual presence of its king, we were not only hindered from going thither in person, but also our dear firstborn son, the king of the Romans and of Hungary, Joseph, to whom our succession devolves in full right after us, cannot at this moment repair to Spain, nor absent himself from our states of Austria, nor from the Roman empire. Knowing well the eminent qualities of our dear son the most serene archduke Charles.....and knowing that the vows not only of all our Spanish subjects, but likewise of all Europe, call him to the crown of Spain.....

"For these motives and others, in the name of the most holy and indivisible Trinity, with the express consent of our dear firstborn son, Joseph, king of the Romans, we have ceded and assigned, we cede and assign, by these presents, in the best form of law, to our second son the most serene archduke Charles and his posterity to be born of legitimate marriage, to the exclusion of those legitimised, the totality of the Spanish monarchy...such as it was possessed by the late king Charles II, and as we could or ought to have possessed it ourself; *saving and reserving upon that kingdom the right and order of succession established by our house*...and the rights of the empire."*

This act had the singular character of being, in its motives and reserves, a sort of protest against the public acts of two confederate powers who, agreeing in that with the Spanish monarchs, had always placed as a principle the incompatibility of the crown of Spain with another crown, French or Austrian. The enacting clause of the act had a decisive importance, at this moment, from its conferring a title apparent of royalty on a prince whom the confederates, and Louis XIV himself, had before accepted for king of Spain; and by the results which it offered in perspective, it

* See the entire text, in Dumont, loc. cit. p. 133 et seqq.

dispersed the scruples of the cabinets relative to the equilibrium of Europe. The Spanish monarchy remained disjointed and separated in the balance. The only matter left for consideration was the choice of the monarch, and they might pronounce for the Austrian candidate, or for the French titular, according to their personal preferences.

Thus the question might be presented on paper, and to the eyes of frivolous minds; but at the bottom of this attempt to establish in Spain the archduke Charles on the throne of Charles II, there was a serious enterprise against the right of nations and the sovereignty of the Spanish people, represented and expressed by the solemn act of its last king. The coalition had, without doubt, a just motive for war to obtain the maintenance of the Spanish crown in its state of isolation; but it overpassed its right, in interfering in the election of a king of Spain, and in imposing on a nation by force of arms whose right of sovereignty was as worthy of respect as the right of prohibition of the other states of Europe relative to the accumulation of crowns.

The struggle could not fail to be irritating and passionate, for the outrage was perpetrated by the coalition, and the evident right was on the side of Philip V. The Spanish nation defended its king with a patriotic devotion, and the more ardently, because the coalition seemed to make no estate of Spain, in this affair. The Spanish clergy pronounced in favour of France, and an archbishop of Saragossa published the following mandate:—

"King Philip III had the power and authority to do what he did, or he had not that power. I say the same thing of the states of the kingdom, who concurred in that act of renunciation. If they had not the power, the renunciation is null and of all nullity, as having been approved, ordained, and accepted by persons who had no authority in that point. If, on the contrary, the king had this power, which is the most favourable to the archduke Charles;* if

* The right of the archduke proceeded not from Margaret wife of the emperor Leopold, who had had by her first marriage but one daughter, married to the elector of Bavaria, and of whom there re-

he could establish a thing contrary to all the laws of the kingdom which speak of succession, contrary to the regular order and to the ancient and particular essence of the right of blood and heredity, a right proceeding from his glorious ancestors the kings of Castile and Leon, and in vigour in this kingdom from the most remote times; who will not deny that another king of Spain, Charles II, our sovereign, had not equally the right to revoke, in favour of the public convenience and utility, a disposition equally exorbitant, irregular, and contrary to the national laws, to reestablish the succession in its natural order and ancient state, in conformity to the laws of the kingdom, observed and kept during the whole succession of ages?

"If then our king Charles II has done nothing else, by his will, than declare that it was not convenient for the public expediency of his kingdom that the renunciation of his sister should cause the exclusion of her descendants; if this will was only made with deliberation, and the advice taken of the holy apostolical see; if, moreover, Charles II ordained to all his subjects to receive for his successor Philip V, and to swear fidelity to him; *if the entire kingdom, obeying their king and lord, as it was their duty to do, accepted, received, and took the oath to his successor in every city:* who can doubt of the validity of this act, made with the same power and more formality than the renunciation,—of this act, much more conformable to the laws of succession and to the right of blood? Our laws do not exclude from the crown foreign houses; Austria was admitted to it without the honour of the throne having suffered. King Charles II, *as a sovereign legislator,* took off the hindrance which his father had imposed by the renunciation; the utility of the kingdom demanded it, and the right of blood did not permit us to suffer any longer the injustice done to Maria Theresa, grandmother of our Philip V, in excluding her descendants, when the laws of the kingdom did not exclude them."*

Thus spoke the Spaniards, and, in the point of view of their internal public right, as well as of the law of nations of civilized Europe, they were right. Charles II could do what had been done by Philip III and Philip IV, and with the same motives. Now, as the archduke Charles (or Charles III, as the confederates called him) drew his claim only from the renunciation imposed upon Anne of Austria by Philip III, in his contract of marriage and in his will,† he could not

mained no posterity, but from Maria Anne of Austria, daughter of Philip III and mother of the emperor Leopold. See above, p. 22.

* This curious document was published for the first time in France by M. Laboulaye, loc. cit. p. 499.

† The will of Philip III was expressed thus:—"*And since it has*

contest, *in jure*, the correlative right which Charles II had to make a similar act in an inverse sense. Philip III and Philip IV had acted as sovereign legislators, in introducing an exception into the common law of the state; Charles II acted by the same title and with the same right, when he repealed this same exception which was no longer necessary.

But, in point of European public right, the letters patent by which Louis XIV conserved to the duke of Anjou the right of succession in France, and the occupation of the Spanish places in Europe and in the Indies by the French arms, constituted an equally just *casus belli*. The coalition had not the right, by that alone, to disown the king of a free and sovereign state, and to elect a new king of Spain; but it might require the withdrawal of the letters patent, the separation of the crowns, and the evacuation of the Spanish Low Countries. It was to this temperate point, founded on reason and on the right of all parties, that a return was made at Utrecht, when the European interest had prevailed over personal rivalries; this was the point occupied even in the act of the grand alliance of 1701. But it was departed from since the treaty of the 16th May 1703, and since the cession made by the emperor Leopold to the archduke Charles.

pleased God to give me two daughters, of whom the eldest, the infanta lady Anne, for just considerations of the public good of these kingdoms and of Christendom, has been given in marriage to the very Christian king of France, under the conventions and conditions that may be seen in the articles of the contract of marriage and of the renunciation; therefore, at the instance of my kingdoms, a law was made, according to the said articles stipulated in the contract of marriage, to which articles the said very serene infanta consented. . . . . Thus, confirming, agreeing to, and approving the things aforesaid and the said law, I command and declare that the said conditions of the contract of marriage must be conserved in everything and everywhere. . . . . For so it is expedient for the good of these kingdoms and of Christendom. . . . . Whereby, consequently, the infanta lady Mary would remain in the present state as an eldest and only daughter, who I declare and command shall succeed in their kingdoms and states, she and all her legitimate posterity, after the extinction of the princes don Philip, don Charles, don Ferdinand, and their descendants."—Dumont, loc. cit. p. 25.

The pretext was the *invincible* distrust inspired in the foreign cabinets by the ambitious temper of Louis XIV. The true reason was rather, perhaps, the particular animosity of the chiefs of the coalition. The new king proclaimed by them, Charles III, published his manifesto on the 9th of March in the year 1704. This also is an important act, as it marks the passage from one order of ideas to another, in the party of the coalition, and as it seems to be the source from which some English writers have lately drawn their ideas touching the political relations which should exist between France and the Peninsula, and touching the interpretation of the renunciation of the duke of Orleans to the crown of Spain, a renunciation of which we shall speak further on, in treating of the peace of Utrecht. The objections are the same; and since they found a peremptory answer in the negociations and in the treaty of Utrecht, it is necessary to know them.*

The manifesto begins by explaining the genealogical rights of the pretender; it reproduces the reproaches of universal encroachment which were then lavished on king Louis XIV; it attacks the authenticity of the will; and it finally discusses the institution of heir, and it refutes in its way the explanation which is there given of the renunciations of Anne of Austria and of Maria Theresa.

"The question," it says, "is to examine this interpretation in itself, if it be true that a prince of Bourbon, descendant of Maria Theresa, can inherit Spain, notwithstanding the renunciation of that princess, provided he be not at the same time presumptive heir to the crown of France.....

"To overthrow this exception from top to bottom, and to show that there has never been chicanery more insupportable and less capable of excusing the violation of the most solemn treaties and oaths, it is more than enough to show.....

"1. That the exception of the motive ceasing which is put on the tapis, in the pretended will, is so little applicable here, that there is not a true jurisconsult who would dare to reason as is there reasoned, for fear of prostituting himself. One must have only what is called a cerebrine jurisprudence, that is to say, that persons of small instruction take it into their heads to judge by slender

* See the manifesto, *in extenso*, in Dumont, loc. cit. p. 140.

appearances, to confound the *condition* with the *cause* expressed in any disposition...There is a great difference between *if* and *because;* the enunciation moreover by *if* is in suspense; but the renunciation of which the reason is to be given is pure and absolute, and may subsist if that reason should not have place; often men do not express all their motives, or use pretexts to cover their real reasons...

"2. In contracts, the motives cannot be interpreted to the prejudice of another...

"If the intention of those who interfered in the renunciation had been uniquely to hinder the junction of the two monarchies in the person of a single monarch, and to limit the disposition to this single case, they would and should speak as it is usual to explain oneself in occasions of such great importance, to obviate doubts and difficulties."...

We are here transported from the high regions of political right to the narrow domain of chicanery; from the superior theories of the right of nations, to the inferior arena of exegetical jurisprudence; from the sphere of state reasons, to the quibbles of civil discussions.

What then is the motive of a political exclusion, if it be not its determining cause? And can the effect subsist, when the reason of its being is suppressed? Now, can the reason of being of the exclusion and of its abrogation be more clearly expressed than in the marriages of the two queens and in the wills of the three kings? A question of public good sense cannot be decided by a lawyer's quibble.

"4. The exception of the motive ceasing has no place," continues the manifesto, "since the motive of hindering the union of the two crowns does not cease (*the thing objected here is the letters patent of* 1700, *which reserve to the duke of Anjou, on leaving for Spain, his rights to the crown of France*).

"5. The evident necessity and safety of Spain, to the end that she may not be one day reduced to a province, demand that she be not exposed to it, and the surest means of avoiding this fatal conjuncture is to cut entirely the thread of succession of the French princes in Spain."...

There is not the question. We want to know if the intention was to run to this absurd extremity of striking with general and absolute incapacity the descendants who should gather a new right in a fact foreign to the person renouncing, like the fact of the

testament of Charles II, or of a marriage, the danger of the union being put aside. It is still the transformation of a political question into a personal question.

"6. There are still," the pretender continues, "other motives of the renunciation which subsist; for it was believed doubtless, in making the treaty of the Pyrenees and the contract of marriage, that the danger for Spain and for all Christendom would be scarcely less, if these two great crowns were joined in the same house of Bourbon, already so formidable, and if two kings so strictly united, and whose extensive countries are joined immediately and on the same floor, were in a condition to give mutual assistance."

Here is established a parity between the strict union of the reigning houses and the reunion of the two crowns on one head. This argument was refuted by the treaty of Utrecht, which recognized the Spanish royalty of a grandson of Louis XIV. It has nevertheless been found again, in our days, under the pen of a foreign minister. But, at this rate, it would have been necessary to prohibit the marriages between the two families of Spain and France, and the policy of all times has been on the contrary to multiply them, from Philip III to Isabella II. Interpreted as the manifesto would have it, the right of nations, prohibiting the solid and pacific amity of two peoples, would be an abominable tyranny. There is no people, animated by noble and generous sentiments, that would submit to it. We shall return to this point.

"7, 8, 9. *(The manifesto argues here on the retortion of the Salic law, indicated in the contract of marriage, and in virtue of which, by a sort of talion, the Bourbons could not obtain, by their marriages with the Spanish princesses, rights which they would not accord reciprocally in France to Spanish princes.")*

The retortion of the Salic law was only a private clause; the Spanish and European reason of state had nothing to do with it. Therefore, it is less expressed than indicated, and rather out of haughtiness than as a compact. The talion, moreover, must be limited to the case of lapse by succession.

"10. Therefore," says the archduke at last, "since all the reasons of the renunciation could not be well expressed . . . . . a clause has been added which decides everything: *the said lady Maria Theresa says and declares that she is and remains well and duly excluded,*

together with all her descendants, male and female, even should she will or be able to say and pretend that in their persons the said reasons of the common weal, or others on which the said exclusion might be founded, do not continue and cannot and ought not to be had in consideration, because in no case, nor in no time, nor in no manner which may happen, neither she nor they, their heirs and successors, have to succeed," &c.

A pitiful argument of the palace, which was replied to by the treaty of Utrecht!

Finally, the manifesto makes a long deduction, *that the safety of the Spanish monarchy and nation had never been in greater danger since the invasion of the Saracens; that the greatest misfortunes are to be expected from a Bourbon king; that the French will import into Spain French manners and morals, which are detestable; that it will be necessary one day to end the matter by a revival of the Sicilian vespers; that the French are only half Catholics; that atheism walks there with unabashed countenance and is going to be introduced into Spain; and, finally, to submit to the French domination, is to open the door to dissoluteness and libertinism.*

We shall return to the examination of some objections stated in this manifesto, in the following paragraphs. It is nevertheless essential to state that the doctrine relative to the extent of the renunciation, to the exclusion of all the princes of France from the throne of Spain, a doctrine until that time personal and peculiar to the house of Hapsburg, now governed the counsels of the coalition, until the moment when we shall see it condemned by the treaty of Utrecht.

By what means had the aim of the grand alliance been changed? What revolution had overthrown the order of the political ideas of the cabinets? is what we will now explain still more clearly.

§ V. NEGOCIATIONS OF THE HAGUE AND GERTRUYDENBERG.

The language of the archduke was commanded by his situation. He was a claimant, and member of the house of Hapsburg, which was threatened with

the loss of half its possessions. It had been constant in his system and pursuit for forty years. But England and Holland, having entirely different interests, had desired and accepted the dismemberment of this succession of Spain, which Austria laid claim to in entire. In appearance, it was the cession of the emperor Leopold to the archduke Charles which changed the face of things. Nevertheless, the concert of three men, eminent by their abilities, and all three secretly animated by one and the same sentiment of profound hostility against Louis XIV and France, had a decisive influence on the new spirit of the coalition. These were prince Eugene, Marlborough, and the grand pensionary Heinsius. The first had been deeply offended by Louis XIV; the second was one of the chiefs of the whig party in England: the interest of his party urged him to war, and a special hatred to France carried him naturally the same way. Heinsius sought amends for the humiliation to which the Dutch had been reduced in a preceding war. This triumvirate was the coalition itself; for Eugene and Marlborough were statesmen as well as warriors; they had the absolute confidence and full powers of the sovereigns whose armies and policy they directed.

The fortune of France and of the grand reign was supported during two years; but reverses began towards the end of the year 1704. The attack and defence had taken the character of a sanguinary struggle. Everybody knows the episodes of this great war of the succession, and I will not retrace them. The fortune of combats, which had so long been favourable to France, seemed to abandon us on a sudden. In 1705, happened the disaster of Hochstett, the consequence of which was the evacuation of Germany. The defeat of Ramilies, in 1706, expelled us from the Low Countries, and the overthrow at Turin drove us out of Italy. Then the war was carried to the frontiers of old France. Toulon was besieged, Lille was taken, and we lost again the battle of Oudenarde. The exhaustion of the country was extreme,

and, dearth adding further to our calamities, the honour and grandeur of the reign of Louis XIV seemed to be compromised.

Dejected at the misfortunes of France, the king nobly demanded peace of enemies to whom he had dictated it during half a century. The coalition, dazzled by prosperity, abused their victory. M. de Torcy and the president Rouillé went to the Hague, in 1709, and received the notification of a project in forty articles, containing the conditions which the allies expected to impose upon France, *under the title of Preliminaries.* These propositions were signed by Heinsius, Marlborough, and prince Eugene; if France accepted them, they agreed to a suspension of arms; but if peace was not made in two months, hostilities were to recommence. In this space of two months, France was to recognize the archduke Charles in the quality of king of Spain, the Indies, Naples, and Sicily, and generally of all the states comprehended under the name of the Spanish monarchy: and the duke of Anjou, Philip V, was immediately to leave Spain, evacuate Sicily, &c. France was to restore to the emperor Strasburgh, Brisach, Landau, and Alsace, which she would thenceforth possess in the literal sense of the treaty of Westphalia; that is to say, she would be satisfied with the right of prefecture over the ten imperial towns: she was to cede to the United Provinces Cassel, Lille, Tournai, Condé, and other places in Flanders.*

Article 6 of these famous *Preliminaries* was worded thus :—

"The monarchy of Spain shall remain entire in the house of Austria, and no one of its parts shall ever be dismembered, nor shall the said monarchy, in totality or in part, be united to that of France, *nor shall one and the same king, nor a prince of the house of France, become the sovereign, in what manner soever it be, by will, acts, succession, matrimonial conventions,* grants, sales, contracts, and other ways, whatever they may be, *nor shall the prince who shall reign in France, nor a prince of the house of France, be ever capable of reigning in Spain,* nor of acquiring, within the space of the said

* See the entire text, in Dumont, loc. cit. p. 234.

monarchy, any fortified towns, places, or countries, in any part of it, especially in the Low Countries, in virtue of any grants, sales, exchanges, *matrimonial conventions*, heredities, appeals, succession by will or *ab intestat*, in whatever sort and manner it may be, as well for him as for the princes his children and brothers, their heirs and descendants."

The object and policy of the coalition was thus no longer what it was in 1701; then it only required, for the emperor of Austria, *satisfactionem æquam et rationi convenientem*, the maintenance of the separation of the two monarchies of France and Spain, and *ne regna Galliæ et Hispaniæ unquam sub idem imperium venirent;* on the 28th of May 1709, at the Hague, it demanded the *totality of the Spanish monarchy* for Austria, and the exclusion of all the princes of the house of France from the crown of Spain, if they were not even called to it by succession, but by marriage. This last case was a remarkable and unforeseen novelty, a singular refinement, in the exclusion. It was a caution which had not yet appeared, neither in the Spanish marriages of the kings of France, nor in the wills of the kings of Spain, nor in the renunciations of the queens Anne and Maria Theresa. In these last acts, the princes of France were excluded by the title of *heirs*, but not by title of *husbands* of an infanta, heiress of the throne; it had not been intended that a direct successible of the crown of France could ever lay claim to the crown of Spain, in quality of *successible of the two queens;* this is the sense and letter of the acts. But they had not included in the incapacity the case where this prince should come to the throne by another title to that of heir of the two infantas; the case, for instance, where he might marry a Spanish princess, and claim to sit by her side, on the throne, in renouncing his own country. The words *matrimonial conventions* are not found in the renunciation, although so exuberant, of Maria Theresa. It was a particular case, to which the clause could not be applicable, if we consider the thought and aim of the renunciation; it was an excepted case, nearly similar to that for which Charles II had disposed, in

his will, in choosing a younger son of France, not heir to the throne, and called to make a separate branch in Spain.

To exclude a Bourbon mounting the throne of Spain, in quality, not of heir of two queens, but in quality of husband of an infanta, it was necessary to prohibit another thing than the heaping together of crowns; it was necessary to exclude the entire race, without any other political reason but a ridiculous distrust, and, to say the truth, a hatred of the blood and name.

It was represented that the only object of the exclusion of the family was to avoid the very possibility of the union, by the most decisive and peremptory means; by the means which should cut, at its root, the thread of any possible junction, and hinder the case of a reunion from ever presenting itself, even imaginatively, by thus removing from the Spanish throne every prince whom the most unforeseen and distant chance might call one day, *mero jure*, to the crown of France.

At no time, and in no civilized country, have the relations of states been governed by laws mathematically absurd. Rules are made for the present and the probable, and not for an imaginary future contingent. The exclusion of the presumptive and probable heirs was certainly a sufficient guarantee; it was folly to go further. This was not the meaning of the treaty of partition of the 25th March 1700, which was limited to excluding the king of the Romans and the dauphin of France; this was not the understanding with the elder branch of Austria; nor had it been formerly the intention of the kings of Spain, and especially of Charles II, when they prescribed an option for these eventual cases.

The true motive of the propositions of the Hague was not prudence, which is always moderate,—but hatred, which is often overbearing and ridiculous.

The old renunciations, applied literally, only excluded the reigning branch of Bourbon and the branch

of Orleans. They did not and could not reach the branch of Condé. The note of the Hague attacked the family *en masse*, and removed it entirely, even in the case where the junction of the crowns was not to be foreseen or impossible. It was a sort of civil or political death, which it would be in vain to attempt to revive now, by altering the sense and letter of treaties, and by which France would have been deprived of the common right in the candidature for the crown of Spain, open to all Europe. The introduction of this principle into the European *droit public* would have had for object to concentrate, for the profit of the house of Austria, the successibility of the throne of Spain, to exclude for ever the alliance of France from that country, and to maintain thus, to the detriment of France, the threatening vicinity of another enemy.

At the bottom, then, and in the simple point of view of the interest of France, the prohibition had a great political bearing. It was designed to hinder for ever a strict friendship between France and Spain, by shutting close the avenues to the Spanish throne against the house of Bourbon; for the reigning houses are, in such cases, only the highest and truest personification of peoples: so much are the welfare, the grandeur, and the interest of nations confounded and identified with the prosperity, glory, and power of the royal races. It was the abasement of France that was sought in the exclusion inflicted upon the house of France. And we are assured even that the party dominant in England had the mad hope of dethroning Louis XIV and partitioning his provinces. "Louis XIV," says Burnet, "refused constantly to join his efforts to those of the allies to oblige Philip V to evacuate the Spanish territory. The allies insisted upon this exorbitant demand, with the more obstinacy, *because they had already conceived the design of conquering the kingdom of France.*"* The humi-

* Histoire de mon Temps, Paris, 1824, 4 vols. 8vo. (French translation.)

liation of the conditions of the Hague would then have been but a first step of Louis XIV to descend from the throne.

In the point of view of international law, the propositions of the Hague constituted a detestable violation of the right of independence and sovereignty of nations. The coalition interfered in the internal *droit public* of Spain. By its own authority, it decreed a law of succession for that kingdom. It did not limit its acts to measures of public safety for Europe, but it distributed and deprived of thrones, without consulting the sovereign state on which they were imposed or from whom they were taken. It proscribed a royal house all entire, and suppressed the right of a whole people to take a race of its own choice for its governors; for king Philip V had been recognised by the cortes of Spain, and Spanish armies fought for him against the Austrian and English armies.

The coalition then had arrived at the point of placing in danger the principles of civilization gained for the nations of Europe more than a century, and consecrated by the grand treaty of Westphalia.

The article 4 of the same proposed *Preliminaries* was expressed as follows:

"And inasmuch as the duke of Anjou is at present in possession of a great part of the kingdoms of Spain, the coasts of Tuscany, the Indies, and a part of the Low Countries, it has been reciprocally agreed that, to assure the execution of the said articles and of the treaties to be made and finished in the space of two months, to commence with the first day of the month of June next, if it be possible, his very Christian majesty shall cause that, in the same term, the kingdom of Sicily shall be delivered to his Catholic majesty Charles III; and the said duke shall quit in full surety and liberty the extent of the kingdoms of Spain, with his wife, the princes his children, their effects, and generally all the persons who will follow them, so that, if the said term ends, without the said duke of Anjou consenting to the execution of the present convention, *the very Christian king and the princes and states stipulating* shall take in concert the measures requisite to ensure the entire effect thereof."

Thus the allies required that peace should be made before the expiration of the two months of the armis

tice, and the definitive conditions of the peace indetermined at their will. Louis XIV was to engage during that time his grandson to descend from the throne; and if he refused, the king was required to take, in concert with the allies, the measures necessary to assure the effect of the conventions; that is to say, he was to join his arms with those of the allies to dethrone his grandson. The allies were not satisfied with Louis XIV withdrawing his troops from Spain. They required further that he should force Philip VI, in concert with them and by force of arms, to lay down his crown, and, in the interval, to prove the sincerity of his promises, Louis XIV was further to cause to be evacuated the places in Flanders and the Spanish Netherlands.

Lastly, the 37th article was thus expressed :—

"In case the very Christian king executes what has been above stated, *and that all the monarchy of Spain be rendered and ceded to the said king Charles III, in the stipulated term*, it is accorded that the cessation of arms between the armies of the high parties at war shall continue till the conclusion and ratification of the treaties of peace to be made."

This article was materially impracticable. It was impossible that in two months the conditions imposed could be executed, and yet they made the continuation of the armistice subordinate to their prealable and immediate accomplishment. Thus, then, after having delivered the places and evacuated Spain, Louis XIV, who was neither assured of peace nor of what the Spaniards would do, was exposed to be delivered up disarmed to his enemies, and see the war continue, without the power of sustaining it with any chance of success. They demanded of him, in reality, that he should lay down his arms and deliver himself at discretion, after having betrayed the nation, the duties of the prince, and those of nature.

M. de Torcy returned to Versailles to receive the orders of the king, who immediately put an end to the conferences of the Hague.

Louis XIV now addressed a proclamation, or cir-

cular, to the governors of the provinces,* to make known to France the conduct he had pursued in the hope of rendering peace to his peoples, and the odious exactions of his enemies. The appeal to the nation produced the greatest effect. In spite of the cruel sufferings to which it had been condemned, it responded with the devotion inspired by patriotism and the resentment of the outrage on the national honour. *It was*, says Saint Simon, *but one cry of indignation and vengeance.* New efforts were made with enthusiasm, and the monarch's elevation of soul, in this critical situation, was perfectly seconded by the heroism of the Spanish nation and of king Philip V, who wrote: *I will only quit Spain with my life.*† But fortune once more betrayed Louis XIV. France was again vanquished at Malplaquet (September 1709).

Overwhelmed with adversity, the king showed himself disposed to subscribe to the hard and humiliating conditions which were imposed upon him. He was resigned to leave the Spanish nation to defend alone its honour, its right, its liberty, its king, its independence. He again asked for peace. But, blinded by their successes and by their resentments, Marlborough, Heinsius, and Eugene set no longer any bounds to their demands. They agreed to conferences, which were opened at Gertruydenberg in the month of February 1710, not to labour at the peace, but to enjoy at leisure and near the humiliation of the great king. The principal object of the negotiation was, from the first, and voluntarily, lost sight of, and whenever they approached it, new difficulties and new doubts destroyed the hope acquired, or the convention agreed upon, and left no longer a chance for the future. France at length submitted to withdraw all the succours which she gave to Philip V, which was followed by a declaration to our plenipotentiaries

* See this fine letter, in M. de Flassan, *loc. cit.* p. 284. We regret not being able to transcribe it here.

† See de Flassan, tom. iv. p. 288.

*that the will of the allies was, that the king of France should take upon himself either to persuade the king of Spain, or alone and with his own forces to constrain him to renounce all his monarchy; that they granted France a truce of two months for this operation.**

Louis XIV had consented that all succours should be withdrawn from the king of Spain, Philip V. He had recognized the archduke Charles in quality of king of Spain. He agreed *that the monarchy of Spain should never be united to the monarchy of France.* He had accepted even that *no prince of the house of France could either reign or acquire anything in the extent of the monarchy of Spain, by any of the ways which should be all specified.*† But, indignant at the last condition which was made for him, he again broke off the conferences, and threw himself anew into the arms of the nation, which assisted him with an unchangeable fidelity; for the war had become eminently national. *C'est merveille*, wrote an illustrious warrior, *que la vertu et la fermeté du soldat.*

By degrees new forces were collected and organized. The war of sieges which opened on the frontier presented admirable feats of arms; and the king, who found again in misfortune the firmness of a hero, said one day to marshal de Villars: "*You see to what we are driven, to conquer or perish: seek the enemy, and give him battle.*" "Sir," replied the marshal, "it is your last combat." "*N'importe!*" replied the king; "*if the battle is lost, you will write only to me. I will mount a horse, and pass through Paris, with your letter in my hand. I know the French. I will lead to you two hundred thousand men, and I will bury myself along with them under the ruins of the monarchy.*" Villars sought the enemy, and gave battle, which was that of Denain (1712).

* See *Actes et mémoires touchant la paix d'Utrecht*, tom. i. p. 128. —Flassan, Dumont, Schoell, &c.

† See the *Projet envoyé par M. de Torcy à M. Pettecum en Hollande, au mois de février* 1710, in the *Actes et mémoires touchant la paix d'Utrecht*, tom. i. p. 83 et seqq.

§ VI. THE PEACE OF UTRECHT.

Things had changed rapidly since Gertruydenburg. Passion, a bad counsellor in politics, had made the allies lose the opportunity of dictating peace to Louis XIV. God put a limit to the misfortunes of France. There was one power which had been counted for nothing in all this affair, and which ended by deciding the question; it was Spain. A nation so proud was shocked to see debated at the Hague or at Gertruydenberg the question who should reign at Madrid. She had formerly had equal causes of complaint against all the pretenders, for they had all wounded her vanity by anticipated partitions; but good fortune had thrown into her arms the duke of Anjou, a young prince of the age of seventeen years, and who showed himself worthy of the courage she displayed to sustain him. He gained battles while his grandfather lost them, and he continued to wrestle, with obstinacy, while Louis XIV seemed to be sinking. The good condition in which his constancy and the skill of his generals had put his affairs, contributed not a little to retrieve those of his grandfather. The right was for Spain and for France. The two nations fought with an energy which the coalition no longer possessed.

In spite of extreme necessities, the prosperity of Spain had increased since its alliance with France. Here is the proof, at the same time curious and convincing. It is taken from a petition of the council of state of the United Provinces to the States General, and dated the 13th November 1711. We there read: *The kingdom of Spain, since the duke of Anjou has ascended the throne, and governed it after the manner and according to the genius of the French, has begun to raise itself from the great decline in which it was fallen since the peace of Vervins, under its last three kings . . . . . Spain has furnished more troops than it had done before during fifty years.**

* See *Actes et mémoires touchant la paix d'Utrecht*, tom. i. p. 173.

Holland and England, on the contrary, in spite of their victories, had long been almost as much exhausted as France. England paid in great part the expenses of a war which had lasted ten years, and which turned in reality against the interests of England: for if the self-love of some men was satisfied with what had passed at the Hague and Gertruydenberg, the public interest of Europe was not. The Dutch people complained, the British parliament was dissatisfied; the English people murmured also, and insulted prince Eugene, who had come to engage the cabinet of Whitehall to continue the war. Marlborough, chief of the governing party,—the party of the whigs—was a weight upon queen Anne, and upon his country. In spite of his brilliant services, he was unpopular and little esteemed. English good sense did not agree with the direction which this warrior impressed on public affairs. A peace, advantageous to England, might have been made in 1709 and 1710, and in place of it a ruinous war continued, with a reverse of chances; the desperate energy to which France and Spain had been pushed was bearing its fruits. In Flanders, in 1711, the resistance of the French troops had arrested the successes of the foreign armies; a descent of the English, attempted at Cette, to support the Calvinistic insurrection of the Cevennes, had been repulsed with as much vigour as prince Eugene had been driven from before Toulon. In Spain the enemy was beaten on every point; and, on the sea, our sailors made head, with advantage, against the allies.

A great event, moreover, had passed since the rupture of the conferences of Gertruydenberg. The emperor Joseph I, son and heir of the emperor Leopold, had died on the 17th of April 1711, without children. His brother, the archduke Charles, acknowledged as king of Spain by the coalition, under the name of Charles III, had succeeded him in his hereditary states. He joined, therefore, *de droit*, the Spanish states to the Austrian states, which he possessed *de*

fait. It followed, therefore, that, after unexampled efforts, the war was on the point of ending in the result which England and Holland had always wished to avoid,—the restoration of the monarchy of Charles V. The combats of ten years, the permanent polemic of the civilians of the coalition, had had for object the re-establishment of the European equilibrium; and the result of this long struggle was the destruction of the political balance, the doctrine so dear to Holland, and constantly sustained by England. Before public opinion, the policy of the allies was taken *en flagrant délit;* the direction of affairs was broken. This situation, in countries of free discussion like England and Holland, was not tolerable; and accordingly the Whig ministry lost the support of the majority in the chambers.

After eleven years, which had passed since the death of Charles II, the interests of each party were more clearly delineated. The interest of Austria and the animosity of the three directors of the coalition had alone remained at the same point. The English interest had been carried back to the side of France, even before the death of the emperor; and from the instant that the hope of a bifurcation in the house of Austria was lost, the political necessity of separating Spain from every other continental monarchy made Europe lean towards Philip V. England had need of peace; she beat us in Flanders, but we beat her in Spain, and our sailors troubled her commerce on the seas. This was not our gain, and it was less hers, and Marlborough did not protect the English merchants by his victories. The war had become unpopular at London; and public opinion called to power the Tory party, the party of peace. Queen Anne wished, moreover, to drive from France a pretender who caused her uneasiness. Savoy and Portugal were, like England, interested in the dismemberment of the monarchy of Charles V; a dismemberment become impossible with the house of Hapsburg.

There had then taken place, by the force of circum-

stances, and in favour of France, a moral revolution, whether resulting from the change of the fortune of the arms, or from the change in the situation of parties in England, or from the metamorphosis of the will of the parties engaged, the coalition was sensibly weakened by it, from the year 1710. It was not an intrigue of the court which overthrew the Whigs; it was their own mad passion. The hatred of Marlborough served Austria, but not England and Europe; for it raised the gigantic colossus of a power, which, to the hereditary states of Austria, already preponderant in Germany, would have joined Italy, the Netherlands, Spain, and the Spanish Indies; that is, the greatest continental force of Europe to the greatest colonial riches of the world.

The coalition had at first been welcome at London, because it presented itself under the flag of political and commercial liberty. It ceased to be so when, forcing its principles, it exceeded the limits of moderation and appeared to pursue the indefinite humiliation of a powerful monarch, whose reign had honoured his age and the human mind, rather than the just and legitimate satisfaction of the interests of Europe, threatened for a moment by the policy of Louis XIV. With Eugene and Marlborough there was a retrogression towards Charles V and Philip II. A government and a king were to be forcibly imposed upon Spain, against her will. This was odious and senseless. A loyal and wise peace with France guaranteed, on the contrary, the independence of the states, the civilization of the peoples, and the equilibrium of the powers. Such was the tendency of minds and position of things, and such was the true cause of the overthrow of the Whigs.

A Tory ministry then succeeded to the Whig ministry. The natural consequence was, that Marlborough, the chief of the Whig party, lost his credit and the coalition its principal agent. Propositions of peace were made, and the overtures came from England itself, which returned from this moment to the path that had been quitted since the treaty of Lisbon in

1703. Louis XIV and his prudent minister, M. de Torcy, took advantage of it with rare ability, to follow up separate negociations with each of the powers of the coalition, and the so striking example of the recent fault of the allies served as a lesson for France, in this return to good fortune.

It was easy for the two cabinets of London and Paris to come to an understanding, for the French interest had become again the English interest. Queen Anne was as desirous of peace as Louis XIV, and Lord Bolingbroke came to Paris to treat with France, which had entirely recovered its position. The coalition dreamt before of annihilating the house of Bourbon; and now *the interests of the house of Bourbon were placed in the first rank.* One single point preoccupied England, and in that she was in her right,—I mean the danger of the junction of the two crowns of Spain and France upon one head; on this point, the cabinet of Versailles lent itself, with a remarkable good faith, to give to Europe the guarantees which she might legitimately require in the interest of the general safety.

The two principal bases of the negociation were the recognition of the interest which France had in the strict friendship with Spain, a friendship cemented by the union of the two reigning houses, and the prohibition of the joining together of the two crowns. There was as perfect an accord on the first head as on the second. The Austrian interest was replaced by that of the house of France, for with it the dismemberment of the Spanish monarchy was possible; the equilibrium was restored in the distribution of states and powers; the interest of the maritime powers was satisfied. The desire of peace was substituted for the passions of the Hague and Gertruydenberg; the change was so complete, that there was no longer any question of the propositions of 1709 and 1710; they were dead letter and forgotten. The peace, in fact, was regulated on bases diametrically opposite. On the former occasion the allies pursued the greatest abasement, the greatest spoliation of the house of France; they designed to render impossible all intimate alliance be-

tween France and Spain, by the fundamental exclusion of the house of Bourbon. At Utrecht, on the contrary, they guaranteed to France its strict alliance with Spain, that is to say, to a French dynasty the possession of the Spanish throne, with sufficient precautions to prevent the reunion of the two crowns on one head. In a word, what prevailed at Utrecht, was the testament of Charles II, and the respect for the right of Spain, in the exercise of its independence and sovereignty, with regard to the order of succession to the throne.

It is of great importance, after this general coup-d'œil, to enter into the details of this great affair.

It was at the end of July 1710, that the conferences of Gertruydenberg were broken off, and the Whig ministry fell on the first of October of the same year. Nothing appeared at first changed in the relations of England, either with its allies, or with France and Spain. The hostilities continued. Marlborough even remained at the head of the army. The Tory ministry differed nevertheless in opinion with the Whig ministry, in respect to the direction of affairs, although the emperor Joseph I was not yet dead. But the honour of England was engaged, and, in face of the foreigner, Whigs and Tories formed but one party.

Soon after the accession of the Tories to power (7th Dec.), happened the disaster of Brihuega, where general Stanhope with 6,000 English laid down their arms before Philip V. This event caused a great sensation in England, augmented again by the news which followed of the battle of Villa Viciosa (Dec. 10, 1710), where the Germans were completely beaten by the duke of Vendome. The coalition was thus in full rout in Spain.

The defeat of the English and Austrian arms in the Peninsula made at London an impression the more profound because there they attached greater importance to the war in Spain. There resulted from it a coldness and recriminations between the cabinets of Whitehall and the Hague. From this moment, the

English cabinet resolved to put an end to the war. *Nous brûlons à petit feu*, wrote Lord Bolingbroke to Mr. Drummond; and afterwards the same minister said to M. Buys, pensionary of Holland: *Il faut faire bonne mine à mauvais jeu; vous le faites, nous le faisons, et la France pour le moins autant qu'aucune autre puissance.* The Tories then wished for peace, which would give them popularity at home, and abroad the friendship of France, Spain, Portugal, and Savoy. These two last states were detaching themselves visibly from the coalition.

There was at London a modest priest who acted an important part, on this occasion, by rare skill and the services which he rendered. His name was the abbé Gautier, son of a merchant of Saint Germain-en-Laye, and formerly almoner to the comte de Tallard, during his embassy in England. He had remained at London, in spite of the rupture, and when, after the battle of Villa Viciosa, the English cabinet had resolved to re-open negociations with France, the earl of Jersey pointed out the abbé Gautier to the earl of Oxford, the head of the ministry, as one fitted to be employed on a delicate mission. This ecclesiastic was chosen, and the earl of Jersey gave him a verbal power to inform the king, "that the new ministers in England wished for peace, but that it did not depend upon them to open immediately a special negociation with France; that it was necessary the king should again propose to the States General to reopen conferences for peace; that when they should be opened, the ambassadors named by England to assist there should have orders so precise, that it should no longer be in the power of the United Provinces to thwart the conclusion of them."*

The abbé Gautier arrived in Paris in the course of

* Mémoires de M. de Torcy, tom. iii.—M. de Flassan, *Hist. de la Dipl.* tom. iv. p. 297 et seqq. is wrong in some of his dates.—See *Letters and Correspondence of the R. H. Henry St. John, Lord Viscount Bolingbroke* (Lond. 1793, 4 vols. 8vo.), tom. i. p. 34, et seqq.

January 1711, and presented himself to the minister of foreign affairs, to whom he said: "Monseigneur, do you wish for peace?" "It was," says M. de Torcy, "to demand of a sick man if he would be healed." Nevertheless, the council was of opinion not to treat of peace by the way of the Dutch, but by that of England herself. The abbé Gautier, therefore, went back to London, and a few days afterwards he returned to demand, on the part of the English ministers, of M. de Torcy, a detailed memoir of the conditions on which France desired peace. The abbé Gautier was soon back in London, with the answer of the prudent minister, dated the 22nd April. The 17th April, the emperor Joseph had died at Vienna. This was unknown at Marly when the following dispatch was written, and it was unknown also at Whitehall when this document was received. The following is the able and very circumspect reply of M. de Torcy:—

"As there can be no doubt that the king is in condition to sustain gloriously the war, it cannot therefore be regarded as a mark of weakness if his majesty breaks the silence which he has kept since the separation of the conferences of Gertruydenberg, and if, before the opening of the campaign, he again gives new proofs of the desire which he has always cherished of procuring the re-establishment of the repose of Europe. But, after the experience he has had of the sentiments of those who now govern the republic of Holland, and of their industry in rendering the negociations fruitless, he will, for the public good, address to the English nation the propositions which he judges convenient to make to terminate the war and to assure solidly the general tranquillity of Christendom. It is in this view that the king offers to treat for peace on the foundation of the following conventions:—

"1. That the English shall have substantial sureties for the exercise henceforth of their commerce in Spain, the Indies, and the ports of the Mediterranean.

"2. The king will agree to form, in the Low Countries, a barrier sufficient for the safety of the republic of Holland, and this barrier shall be agreeable to England, and at the will of the English nation; his majesty promising at the same time an entire liberty and assurance for the commerce of the Dutch.

"3. Reasonable means for satisfying the allies of England and Holland shall be sought sincerely and in good faith.

"4. As the good condition of the affairs of the king of Spain furnishes new expedients for terminating the difference relating to that monarchy, and to regulate the satisfaction of the parties in-

terested, it shall be laboured sincerely to surmount the difficulties arisen on that occasion; and the state, commerce, and generally the interests of all the parties engaged in the present war shall be assured.

"5. Conferences to treat for peace on the foundation of these conditions shall be immediately opened, and the plenipotentiaries whom the king shall name to assist at them, shall treat with those of England and Holland, singly or conjointly with those of their allies, at the choice of England.

"6. His majesty proposes the towns of Aix-la-Chapelle and Liège for the place where the plenipotentiaries shall assemble.

"Done at Marly, the 22nd April, 1711."*

We see how much the bases of this new negociation differ from those of Gertruydenberg. There the point of departure had been the perpetual exclusion of the house of Bourbon from the totality of the Spanish possessions;† now, on the contrary, the point of departure was the maintenance of Philip V, with suitable satisfactions for the confederated powers. The negociations of 1711 had thus another aim from the negociations of 1709 and 1710. We cannot, therefore, argue upon what passed at the Hague or at Gertruydenberg, in 1709 and 1710, to explain the sense of the treaty concluded at Utrecht in 1713, since these different acts emanated from opposite principles, and the parts were completely reversed, as the sequel will show. In this respect, we may call in the testimony of a learned and exact historian, deeply versed in diplomatic matters, and little favourable to France by his political sentiments. *France*, says he, *which before had vainly made the most humiliating demands to obtain peace, was sought by England,*

* See Lett. and Corresp. of the R. H. Henry St. John, Lord Visc. Bolingbroke, vol. i. p. 172, et seqq.

† See the *Actes et mémoires touchant la paix d'Utrecht*, tom. i. p. 121. "It is notorious and incontestable," said the plenipotentiaries of the confederates in their *ultimatum*, "that before entering into any negociation...the restitution of Spain and the Indies has always been placed as a firm and unchangeable foundation. There remains no longer any question in that respect, except that the high allies demand that there be given to them a full surety, upon which they can depend, that this foundation, once laid, shall not be overturned."

*and people spoke no more of the preliminaries of the Hague and Gertruydenberg than if they had never existed.**

It is an error, generally prevalent in France, that queen Anne's change of policy was the result of an impertinence of the duchess of Marlborough. The fact is that the incident alluded to was posterior to the mission of the abbé Gautier. As to the duke, the secretary of state, lord Bolingbroke, expresses himself in regard to him in the following manner, when writing to the pensionary Buys, on the 12th of January, 1711:—

"The duke of Marlborough is at present here; he has taken the part of submitting in everything to the will of the queen, and on that footing he will be able to support himself. All those who have the honour to be in office are ready to take him by the hand and to render the best services they are able to her majesty and the common cause, in concert with him; but *il faut marcher droit.*"†

On the 23rd March, Bolingbroke writes again to M. Buys:—

"I am very glad to see that the duke of Marlborough is satisfied with us; this is certain, that we have used towards him all the good faith and sincerity possible."

It has also been said that the Tory ministry treated alone with France, and unknown to the states of Holland. This is false, as the mission of the abbé Gautier proves; and it is still further proved by the correspondence of Bolingbroke with M. Buys. This minister showed an admirable loyalty towards both France and Holland, in his conduct in this affair. When he received the note of M. de Torcy, already mentioned, he immediately communicated it to Lord Raby, the English ambassador to the States General, with orders to communicate it discreetly to the pensionary and the other Dutch ministers, but not to the duke of Marlborough.‡ He did his best to destroy the opinion

* M. Schoell, *Hist. des Etats Européens*, tom. xxix. p. 25.

† The English minister alludes to sinister reports, then current, relating to the administrative probity of the duke of Marlborough.

‡ The note of Holland, in reply to this communication, was shewn to the abbé Gautier. It was thus expressed:—"Great Bri-

which prevailed in France that Holland was the principal obstacle to the peace. The two cabinets were then agreed upon the main point of the question. Subsequently, Heinsius embroiled all, and England determined on treating alone.*

On the 8th of May, the abbé Gautier wrote to M. de Torcy the following letter:—

"I had the honour to write to you, last Tuesday, that I had delivered the note with which you had charged me, the 23rd of the last month; it has been read, examined, and just sent over to the States General. After having taken this step, it is thought reasonable that you should explain yourself particularly on the contents of the first article, and that you should make known what you mean by these words: *That the English shall have substantial sureties for the exercise henceforth of their commerce in Spain, the Indies, and the ports of the Mediterranean.*

"I am ordered to write you this to-day, and I pray you will have the goodness to send me an answer as soon as possible.—London, May 8, 1711."

The transaction was proposed clearly; and the able Torcy replied on the 31st of May, from Marly, by the following note:—

"I sent you word, sir, by the last ordinary, that I had received your letter of the 8th of this month, and that I would reply immediately to the more particular matter contained in it. I acquit myself to-day by giving you the explanation you ask on the first article of the project which I entrusted to you. In truth, it would be a matter to be deferred till the conferences, and you could hardly require explanations, when there is nothing assured on your part; but we are willing to pass over that difficulty in order to show you not only the good faith which you desire, but also the confidence

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tain has communicated to Holland the propositions which she has received from France, to serve for the foundation of a treaty of peace. Holland desires, equally with Great Britain, to have a general peace, which shall be definitive and durable, and gives assurance of her readiness to join in all means most fitting to procure it. She desires, as well as Great Britain, that France would explain herself more particularly on the points contained in them," &c.—Bolingbroke's Corresp. *loc. cit.* p. 198.

* We read in one of Bolingbroke's letters:—"I am not astonished at the open jealousy which you have observed, in the pensionary, on the reports that are abroad touching the peace, nor at that which the count de Zinzendorf (the Austrian ambassador) has shown with less reserve," &c.—Vol. ii. p. 283, letter of July 24, 1711.

we have in you. *You can then assure those who employ you that we have the word of the king of Spain to leave Gibraltar to the English, for the substantial surety of their commerce in Spain and in the Mediterranean. You will add that there has not yet been made any proposition to his Catholic majesty for the* surety of the commerce of the Indies, because it is necessary first to know what will be agreeable on this subject to England. Ask this, therefore, and as soon as you shall be informed of it, we will act strongly," &c.*

The death of the emperor Joseph only, therefore, corroborated, by an European state motive, the manifested resolutions which the British state motive had alone provoked; Bolingbroke's correspondence leaves no doubt in this respect. Moreover, Portugal followed the example of England, and was treating on its side with France. Queen Anne had sent to Paris the celebrated poet Prior, under-secretary of state, who, accompanied by the abbé Gautier, had just entered into direct communication with M. de Torcy, to sound to the bottom the intentions of the French cabinet. The court of London asked for categorical answers, but the court of France, which was not prepared to give them on all the points, proposed that the communications already exchanged should be converted into official negociations, and that the seat of the conferences should be transported to London; which was accepted.

The king named, to negociate at London, Nicholas Mesnager, whose intelligence and dexterity he had remarked in a mission with which the commerce of Rouen had charged him to his ministers. Mesnager arrived in London on the 18th of August, was well received there, and immediately entered into negociations with the English ministry. The political questions being in truth determined, the only thing left for consideration was the means to be followed for the execution of their common intentions; but the thorny questions were those which touched the interests of commerce. The cod-fishery nearly produced a rupture. It was agreed to treat separately the two

* Correspondence of Lord Bolingbroke, *loc. cit.*, p. 178.

kinds of questions; and on the 8th of October, M. Mesnager notified the preliminary articles which follow:—*

"The king desiring to contribute with all his power to the restoration of the general peace, his majesty declares:—

"1st. That he will acknowledge the queen of Great Britain in that quality, as also the succession to that crown, according to the present establishment.

"2nd. *That he will consent willingly and in good faith that all just and reasonable measures be taken to hinder the crowns of France and Spain from being ever joined in the person of one and the same prince, his majesty being persuaded that a power so excessive would be contrary to the good and to the repose of Europe.*

"3. ....." &c.

The political question was, by this note, re-established in its true light. The only European interest was that of the joining together of crowns. On this point only the debate between France and England could bear. Thus we remark that the legitimacy of the king of Spain was never discussed. It was a question of Spanish nationality, and in which the confederates were incompetent, *ratione personæ* as much as *ratione materiæ*. We shall soon see that the negotiation was constantly conducted and contained in this limit.

Nearly at the same time, Duguay-Trouin added to the glory of the French navy by the brilliant exploit of Rio Janeiro, and the emperor Charles VI, who still claimed to be Charles III king of Spain, protested against the pacific intentions of his allies by a long manifesto, in which he gave vent without measure to the irritation which he experienced.† The Dutch determined on accepting the preliminaries of M. Mesnager; and, the common intention of France, England, and Holland, being that all the princes engaged in this war should receive an equitable satisfaction, a general

* See the *Actes et mémoires touchant la paix d'Utrecht*, tom. i. p. 162 et seqq. and the pièces justificatives, No. 6.

† See the *Actes et mém. touchant la paix d'Utrecht*, tom. i. p. 165, et seqq.

congress was appointed for the 12th of January following, in the town of Utrecht.*

Prince Eugene caused to be delivered about this time (Dec. 9, 1711) to queen Anne a memoir, in which he strove to shew the dangers of a treaty based on the consecration of the rights of the house of Bourbon in Spain. The author preferred the junction of the two crowns of Austria and Spain to the separation of this latter kingdom, if a Bourbon were to reign there. A crowd of arguments, reproduced at the present day by some organs of the press in England, proceed from this memoir. The principal grievance is the advantage which France would reap from the domination of a friendly power in the peninsula. This memoir, supported by prince Eugene himself, who had repaired in person to London for that purpose, was the last effort to obtain the continuation of the war.

In order to cut short all underhand dealings, the queen, having called together the two houses of parliament for the 17th of December, announced to them the resolution she had taken to treat with France.

"I have called you together," she said, "as soon as the public affairs would permit, and I am glad that I can now tell you, that, *notwithstanding the arts of those who delight in war*, both place and time are appointed for opening the treaty of general peace."†

On the 20th December, the Commons presented to the queen an address, in which, after having assured her of their devotion, they promised to forget nothing *to promote the execution of her wise projects, and to defeat the manœuvres of those who wished to continue the nation in a war with the French.*

The opposition in the house of Lords, bolder than that in the Commons, drew up a bitter attack on the project of peace in the form of an address; to which the queen answered that *she believed that she was in*

* See Flassan, *loc. cit.*; Schoell, *Hist. des Etats Europ.* tom. xxix. p. 29.—*Actes et mémoires*, &c. *loc. cit.*

† See *Actes et mém. touchant la paix d'Utrecht*, tom. i. p. 239.

*a position to disentangle her particular interests and those of the nation from those of the allied powers.**

Thus terminated the year 1711. That which followed also ran out its course, before the elaboration of the general peace was terminated; but several events marked its course. The first was an incident relating to the Low Countries. The adjudication of these provinces was one of the difficult questions of the treaty. Holland desired to have a neighbour according to her own taste; she feared most a grandson of the king of France. England had the same interest. The separation of the Belgic provinces from France had then been for more than a century, and has since continued to be, one of the principal maxims of the continental policy of England.

In 1698, before the war of the succession, Louis XIV had consented that the Low Countries should be given to a Bavarian prince, as a satisfaction to Europe. On the 2nd of January 1712, in fulfilment of this plan, Louis XIV procured an act of donation from his grandson, giving up the Low Countries to the elector of Bavaria.† But, on the eve of the opening of the congress, this act passed in favour of a prince to whom Louis XIV had wished to mark his personal gratitude, was not accepted by the foreign powers as a deed accomplished.

A second remarkable incident was the manifesto of the English ministry. After the sensation created by the speech of the crown, and the protest of the Whigs, it was difficult for the ministry to keep silence in face of the violent attacks to which it was exposed. Hitherto the ministers had spared their adversaries, and especially Marlborough; they now threw aside all reserve. They feared not to say to England *that she had fought only to ruin herself, to augment the riches and credit of a single family, to enrich usurers, and to foment the pernicious designs of a faction.*

* See Salmon, *Abr. chron. of the Hist. of Engl.*, vol. ii. p. 26.

† See Dumont, *lac. cit.*, and the *Actes et Mémoires*, &c., tom. i, p. 257.

On the question of the Spanish throne, the ministry expressed itself in the manifesto as follows:—

"One thing which has never been considered by those who would have us make no peace without snatching Spain from the duke of Anjou, is that the state of affairs has changed in Europe, especially since the death of the emperor Joseph. The interests of several princes and states engaged in the alliance are no longer the same, and such is the case with our own. We have already committed a blunder in not accepting peace, at the time when affairs were on the old footing; we ought to fear committing another, now that the situation of things is different.

"*It is without doubt more advantageous to us to see a prince of the house of Austria on the throne of Spain, than to see one of the house of Bourbon there.* But, to see the empire and the Spanish monarchy united on one head, is what is very injurious to us, and is directly opposed to the prudent principle on which is founded the eighth article of the grand alliance.....

"It may perhaps be said that, seeing the indolent character of the princes of the house of Hapsburg, the bad economy of their government, the want of maritime forces, the distance apart of the countries of which they are masters, an emperor, though at the same time king of Spain, could not become formidable; that he would be obliged on the contrary to depend always on Great Britain; that thus the advantages which we should draw from commerce would pay us amply the expenses of the war.. ...

"Suppose that we might arrive in this manner at peace; but to what should we be reduced before obtaining it?.....The necessity of involving ourselves more and more would reduce us to beggary for several centuries... ..

"The comparison is not made here between a prince of the house of Austria, who should be at the same time emperor and king of Spain, and a prince of the house of Bourbon, who should be at the same time king of France and king of Spain; but between a prince of the house of Bourbon, who should be only king of Spain, and a prince of the house of Austria who would unite at once the empire and Spain in his possession....."

The house of Commons partook entirely in the sentiments of the ministry, and it made a new address, of representations to the queen, in March 1712,* in which it did not conceal the exact situation of the British finances, the enormous subsidies furnished during ten years by the Treasury, the individual dilapidations, and the wisdom there was in making peace.†

* See *Actes et Mémoires*, &c., tom. i, p. 420.

† See the letters of Lord Bolingbroke to M. de Torcy, of the

There is here ample matter for reflection. In the long debate on the succession of Spain, each in his turn had overshot the aim, and each in his turn was punished for it: France, by reverses; England, by the necessity of retracing its steps. This retrogression of England enlightened, on the acts of England misled, is a grand and memorable lesson. After the death of Charles II, she had long hesitated before running the risks of the struggle; from 1701 to 1703, she had rather threatened than acted. In 1703, the duke of Marlborough engaged his country in the violence of a war of succession, in which England had but a political interest which she could have preserved otherwise. In 1710, she refused peace to Louis XIV, and Marlborough placed France on the verge of destruction; but the finances and commerce of England were suffering; and, victorious as she was, England was obliged in her turn to wish for peace, and to retract from 1711 to 1713 what she had done from 1703 to 1710. A retractation the more remarkable, because it was deliberate, durable, and public. The moral of this history is, that a war of succession will never be made again in Europe; France will not dream again of uniting the two crowns, nor will England dream of imposing a king upon Spain.

The conferences for the peace were opened on the 29th of January 1712, in the Hôtel-de-Ville of Utrecht. Brilliant speeches occupied the first sittings, and each of the plenipotentiaries having been invited to present his demands, the French plenipotentiaries began by deposing their *specific offers*, which will be found in the Appendix, No. VII. We there read this clause relating to the crown of Spain.

"The king will consent willingly and in good faith to take, in concert with the allies, all the most just measures to hinder the crowns of France and Spain from being ever united on one and

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15th December, 1711, 12th January, 1712, &c. "*The difficulties which oppose us are great*", says the English minister, "*but the resolution of the queen will overcome them*".

the same head, *i. e.*, one same prince from being at the same time king of both."

The plenipotentiaries were to seek in good faith *just and reasonable* means of execution; but the means ought not and could not go beyond the unique aim proposed; to avoid the uniting together, nothing further.

The plenipotentiaries of England deposed, a few days afterwards, and on their part, their specific demands; the text may be seen in the collection of the *Actes et Mémoires d' Utrecht.** England and Holland acquiesced in the offer made by France, which appeared to them so satisfactory, that their diplomatic note is almost exclusively consecrated to the indication of the commercial advantages desired by each of the two powers. In this point, England and France had the same thought, and the offer made by this latter power was accepted by England, in its spirit as much as in its form and tenor. We remark the same silent acquiescence in the *postulata* of the other powers, with the exception of the emperor, who would naturally persist in his claims, and of the king of Portugal, who filled in this respect an office of courtesy.

We must here call attention to an article which we read in the *postulata* of Holland. That power accepted, without hesitation, in 1712, the *specific offer* of France; although, in 1709, she drew up the famous *preliminary* proposition which excluded the house of France *all entire* from the throne of Spain, even when it would arrive at it in consequence of *matrimonial conventions.* She was satisfied now with the mere prohibition of the union of the crowns; and, in fact, from the moment she accepted Philip V as king of Spain, she could no longer reasonably demand anything more than the consecration of the principle of separation. She had, however, so little forgotten the protocol of 1709, that she re-produced it, in her *postulata*, with regard to a particular point which she

* Tom. i, p. 320, et seqq.

had much at heart. She attached the greater importance to not having the king of France for neighbour, even indirectly, because this wish was also that of England. She demanded, in consequence, the Low Countries for the emperor of Austria, and added:—

"It being understood that no province, town, fort, or place of the said Spanish Low Countries shall ever be ceded, transferred, or given, or fall, to the crown of France, *nor to any prince or princess of the house or line of France;* by virtue of any gift, sale, exchange, *matrimonial convention*, succession by will, or *ab intestat*, or under any other title that may be; nor be placed, in any manner whatever, in the power of the very Christian king, *nor of any prince or princess of the house or line of France*".*

This is what England also wished for the Low Countries, but what none dreamt of requiring for Spain; in respect to which, in fact, it would have been absurd to close the avenues of the throne from the other princes of the house of Bourbon, when they should be called to it by *matrimonial conventions*, the moment they accepted for king of Spain a Bourbon, grandson of the reigning king of France, son, brother, and uncle of presumptive heirs of Louis XIV. It was sufficient, with regard to all, in the common thought, to prohibit the reunion of the two royalties on the head of one and the same prince.

It does not even appear that the English ministers had given their plenipotentiaries any detailed instruction on the means of execution of the convention relative to the prohibition of the union. Apparently, in the mind of the English ministry, a general assurance, converted into a public compact by the treaty, was to be sufficient. There were then between the king of Spain, Philip V, and the crown of France, several intermediate princes, who made the probability of a possible union distant. The correspondence of Bolingbroke gives credibility to this intention of limiting themselves to general though absolute prohibitions,—that is, to rest on the terms of the will of Charles II.

* See *Actes et Mémoires*, &c., tom. i, p. 343. The *postulata* are not given in Dumont.

A calamitous and unforeseen event put the confederates, and especially England, in the necessity of entering into greater details on this subject. Provision was then made for the means of execution, but without departing from the principal and primitive thought.

The fatal event alluded to was the death of the dauphin, known by the beloved title of duke of Burgundy. The political misfortunes of the great king had been followed rapidly by family misfortunes no less smarting and grievous. The grand-dauphin, *Monseigneur*, died of the small-pox, at Meudon, on the 14th of April 1711. The duchess of Burgundy, dauphine after the death of *Monseigneur*, died at the age of twenty-six, on the 12th of February following, and the dauphin, duke of Burgundy, survived his wife but six days. The duke of Brittany, the eldest of the two princes whom they left, soon followed himself; and died on the 8th of March, at the age of five years. There remained thus of all this lineage, but the duke of Anjou, afterwards Louis XV, a prince then only two years of age, and who was also in great danger. So that Philip V, king of Spain, second son of *Monseigneur*, and uncle of the new dauphin, was only separated from the throne, to which the right of blood called him, by a prince in his childhood and in a weak state of health. This critical situation of the reigning branch of Bourbon gave birth to serious reflections in foreign cabinets; and the English ministry must have given to it a solicitude the more lively, because the opposition would not fail to draw from it an argument to accuse them of want of foresight.

It was then only that *additional* instructions were given by the English cabinet, on the subject of the means to be taken to avoid a union or accumulation of crowns which anew presented itself as possible. It was then alone that the renunciations were dreamt of, and that Lord Bolingbroke made the following communication to the ministers at Utrecht:—

"I received, yesterday morning, a letter from M. de Torcy,

dated last Thursday,* by which he announces to me the news of the death of the third dauphin deceased this year, with the assurance that the king persists in the resolution of concurring with us, by efficient measures, to prevent the union of the two crowns. Mr. Harley is to communicate to your lordships the best means that the queen has thought convenient to obtain this result. The death of these princes leaves but a child of two years between Philip V and the crown of France, and imposes upon us the necessity of occupying ourselves first of all with this important question".†

And, in fact, Mr. Harley received the following *additional* instructions:—

"An expedient, on that article, by virtue of which the most effectual measures are to be taken to prevent the union of the two crowns of France and Spain, will prove a point of the greatest difficulty, and it is of the utmost consequence. *None can be offered which will not be liable to several objections;* but, besides that mentioned in the last dispatch from my lords plenipotentiaries of the 26th February, her majesty thinks that it might be proposed that the entail of the Spanish crown should be expressly settled in the treaty, that the case of Philip or his children coming to have a right to the crown of France, should be declared to be, in all respects, the same as the case of the extinction of that branch; that the next successor in either of these cases, should be named in the treaty. *That, if it is practicable, the states of Spain themselves be made parties to this agreement*".‡

And, in a second *additional* instruction, it is said:—

"Besides the points already mentioned, it has been thought proper to add these which follow: upon the news of the death of the dauphin, and the nearer approach of that case, where the same person may have a title to the two crowns of France and Spain; that the entail of the crown of France be settled, after the present dauphin and his children, on the duke of Orleans and his children, and so to the rest of the family of Bourbon, exclusive of Philip and his issue.

"That Philip make a formal renunciation for himself, and for his issue, of all right to the crown of France; *and that the cortes, or the states of Spain, may be, some way or other, as shall be found most practicable, made parties to the exclusion of the rest of the house of Bourbon, and to the farther settlement of the crown of Spain* [in case of the extinction of the family of Philip V, as had been seen

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* The letter of M. de Torcy is dated the 10th of March, and is printed in the Correspondence of Lord Bolingbroke, tom. ii p. 204.

† See Correspondence of Lord Bolingbroke, tom. ii. p. 199.

‡ Correspondence of Lord Bolingbroke, vol. ii, p. 189.

already in the Spanish branch of Austria], *in such other family as shall be agreed upon.* The desire of the queen would be that the choice fall on the house of Savoy," &c.

These are the first ideas that were published, by England, in presence of an imminent danger, on the selection of an expedient to avoid the union of the two crowns. The fundamental idea was this: to destroy every tie of successibility between the two branches, Spanish and French, of the house of Bourbon. It must be remarked that the English ministry avoided any direct interference in the interior regulation of the right of succession to the throne of Spain. The renunciation was to emanate from Philip V, *a sovereign legislator*, and this new law of succession was to obtain the sanction of the country of Spain, represented by its cortes. The sovereignty of Spain was therefore respected, and this was a second return from the practice adopted down to that time.

No renunciation was then required of the duke of Orleans, or of the branch of Condé. As to the renunciation of Philip V, M. de Torcy replied, with great good faith, to the propositions we have just read, by a memoir delivered to the abbé Sautier.

"France", said he, "can never consent to become a province of Spain, and Spain will have the same feeling with regard to France. It is then the question to take solid measures to hinder the union of the two monarchies; but we should depart absolutely from the end proposed....if we acted contrary to the fundamental laws of the kingdom. According to these laws, the prince nearest to the crown *is the necessary heir to it*....he succeeds, not as heir, but as monarch of the kingdom....by the sole right of his birth. He owes the crown neither to the will of his predecessor, nor to any decree, nor lastly to the liberality of any one, but to the law. This law is regarded as the work of Him who has established all monarchies, and we are persuaded, in France, that God alone can abolish it.

"No renunciation, therefore, can destroy it; and if the king of Spain gave his, for the good of peace and in obedience to the king his grandfather, we should be deceived in receiving it as a sufficient expedient to prevent the evil which we propose to avoid."*

After this explanation of the internal *droit public*,

* See Correspondence of Lord Bolingbroke, tom. ii. p. 222.—The note referred to is dated the 22nd of March.

of the ancient French monarchy, M. de Torcy adds that the surest expedient would be to fall back upon the will of Charles II; according to which, if the case of the hereditary union of the two monarchies should occur, the king of Spain was to choose between the crown of France and that of Spain, and this last crown was to pass, by way of substitution, either to a collateral branch of Bourbon, or to the house of Austria, with the same charge of separation.

We learn further from M. de Torcy that, since the accession of Philip V to the throne, that prince had caused to be enregistered in the councils of Spain, a declaration bearing that the descendants of queen Anne of Austria were to succeed to the throne of Spain, in default of descendants of Maria Theresa, as being relieved from the renunciation of their grandmother, by the same title as these, by the will of Charles II. The descendants of Anne of Austria, excluded in the first case by the renunciation of their grandmother, converted into a law of the state, as we have seen before, had then been relieved from the exclusion by the will of Charles II, converted equally into a law of the state, and by a decree of Philip V, approved by the cortes. The same sovereign power had modified, in all cases, in virtue of its national right, the law of succession to the throne. We shall return to this important point. Thus, continues M. de Torcy, *the duke of Orleans would succeed to Philip V, in default of the duke of Berry, after the eventual option of each of these princes for the crown of France; this disposition might insure the perpetual separation of the two monarchies.*

Lord Bolingbroke hastened to reply to M. de Torcy, that the proposed expedient was not agreeable to the queen; and in fact, said he, supposing *that the case could arrive in which he who should be in possession of the crown of Spain would have the right to succeed to the crown of France, who could assure that this prince would not use his power to keep the one and to acquire the other*, rather than shew a generous

moderation, which Bolingbroke terms *without example?*

"We are willing to believe," adds Lord Bolingbroke, "that you are persuaded in France that God alone can abolish the law on which the right of your succession is founded; but you will permit us to be persuaded in Great Britain, that a prince can give up his right by a voluntary cession, *and that he in favour of whom this renunciation is made may be justly supported in his claims by the powers who become guarantees of the treaty.*"*

M. de Torcy had placed the question on the ground of French *droit public;* the English minister placed it more *à propos* on the ground of the European *droit public.* In another letter written to a foreign minister sitting at Utrecht, Lord Bolingbroke expresses his resolution in terms which are important:—

"Let us be firm upon this point; every man can make a voluntary cession of his right, and those who are guarantees of an agreement may justly support the claims of him in favour of whom the voluntary resignation shall have been made. *On the first plan, the interest of the house of Bourbon will accord with the general interest of Europe;* on the other, our whole surety is but the life of a child of two years old."†

Several other dispatches were exchanged on this subject between the ministers of England and France; they are preserved in the correspondence of lord Bolingbroke, and prove the sincerity of the two cabinets, and the difficulty of the solution. In the state in which the royal family of France then was, Louis XIV hesitated in removing definitively his grandson, Philip V, from the succession to the throne of France. He was desirous of reserving for him the power of choosing between the two crowns, if the case offered itself. England, on the contrary, wished that the choice should be immediate and irrevocable. This point was debated in the conferences during more than a month. Things were in this position when the queen of England proposed an expedient which was not accepted. It was, that Philip V should give up Spain and the Indies to the duke of Savoy, who,

* Correspondence of Lord Bolingbroke, tom. ii. p. 22.

† Correspondence of Lord Bolingbroke, tom. ii. p. 237, et seqq.

in exchange, should cede to Philip V his hereditary states, with Montferrat and the Mantuan. Sicily, Naples, and the states of Savoy, would thus have formed a royalty; which, with the exception of Sicily, would have remained in the power of Philip V, in the case of the succession of France having fallen to him; and the states of Savoy would have been, in this case, regarded as *provinces of France;* the Spanish monarchy would have been definitively fixed in the house of Savoy,* and if France had lost some security of neighbourhood on the side of the Pyrenees, she would have been repaid by the security of her barrier of the Alps. These propositions were made in the month of May. Louis XIV pressed the king of Spain to subscribe to them; a correspondence on this subject, as noble as it was affecting, which has been published, followed between the grandfather and his grandson. But Philip V pronounced for Spain, which for ten years, he said, had shed its blood for him on fields of battle, and he preferred distinctly renouncing his claims to the crown of France.† Philip V added that he was acting, even in this, as a *bon Français;* and he spake the truth.

As soon as the news arrived in London, the queen hastened to communicate it to the parliament, and we read the following passages in her speech of the 17th June 1712:—

"The apprehension that Spain and the West Indies might be united to France, was the chief inducement to begin this war; and the effectual preventing of such an union was the principle I laid down at the commencement of this treaty.

"Former examples and the late negociations sufficiently shew how difficult it is to find means to accomplish this work. I would not content myself with such as are speculative, or depend on treaties only; I insisted on what is solid, and to have at hand the power of executing what should be agreed.

"I can therefore now tell you, that *France is at last brought to offer that the duke of Anjou shall, for himself and his descendants, renounce for ever* all claim to the crown of France; and that this

* See the Correspondence of Lord Bolingbroke, tom. ii. p. 284, et seqq.

† See the same Correspondence, *ibid.* p. 355, et seqq.

important article may be exposed to no hazard, the performance is to accompany the promise.

"At the same time the succession to the crown of France is to be declared, after the present Dauphin and his sons, to be in the duke of Berry and his sons, in the duke of Orleans and his sons; and so on to the rest of the house of Bourbon.

"As to Spain and the Indies, the succession to those dominions, *after the duke of Anjou and his children*, is to descend to such prince as shall be agreed upon at the treaty; for ever excluding the rest of the house of Bourbon.....

"The nature of this proposal is such, that it executes itself; the interest of Spain is to support it; and in France the persons to whom that succession is to belong, will be ready and powerful enough to vindicate their own right.

"France and Spain are now more effectually divided than ever; and thus, by the blessing of God, will a real balance of power be fixed in Europe, *and remain liable to as few accidents as human affairs can be exempted from.*"*

In fact, there was no better way of proceeding, than to separate immediately all tie of co-successibility between the two branches, Spanish and French, of the house of Bourbon. The house of commons gave its approval to the queen's communication; but a violent opposition was shown in the house of peers. The peers in opposition expressed, in their protests, the opinion *that the renunciation of Philip V was nul, that it was not obligatory to his children; that their right of birth was inviolable, according to the fundamental constitution of the kingdom of France; that nobody in France would believe himself obliged by it; that they could not reasonably promise themselves that the two crowns of France and Spain will remain separate in the branches of the house of Bourbon; that the project of the ministry would have no other result than to unite together the monarchies of France and Spain, and to establish the universal monarchy of the house of Bourbon.*†

Up to that time the renunciation of Philip V only had been talked of; but when the objection of a radical nullity was raised, a remedy was sought in obtaining a new guarantee by the renunciation of the

* See *Actes et Mémoires*, &c. tom. ii. p. 27 et seqq.

† *Ibid.* p. 35 et seqq.

dukes of Orleans and Berry of the rights to the crown of Spain, which might fall to them, either through Anne of Austria, or through Maria Theresa. Several motives decided the English Cabinet to demand these renunciations. In the first place, the dukes of Orleans and Berry, admitting the efficacity of the renunciation of Philip V, were separated from the throne only by a child two years old, and in ill health. In the second place, the renunciation of the duke of Berry and of the duke of Orleans of the right of succession to the Spanish monarchy, was equivalent to the renunciation of Philip V to his right of succession to the French monarchy. The desire to give to an unilateral contract of renunciation the force of a synallagmatic contract, by the complement of an equivalent renunciation, was the motive of the demand which lord Bolingbroke made to M. de Torcy, in the following letter, dated the very day of the royal session, in England:—

"The queen, sir, has commanded me to inform you that, although your last memoir has not answered, according to her expectations, the demand I sent you, her majesty has nevertheless repaired to-day to the parliament, and made all the declarations necessary to render this nation unanimously inclined to peace, and to deprive those who have the inclination of the power of placing any further obstacles in the way of the conclusion of our great work.

"The commencement and course of this negociation have been established on the good faith of both parties; the queen rests entirely on that of the king; she believes that she has given him proofs of it, and she is ready to give them anew; but there are certain cases in which, between the nearest relations and between the most intimate friends, prudence requires that the most exact precautions should be taken.

"*The expedient for preventing the union of the two monarchies of France and Spain is the capital point of our negotiation, and her majesty would rather give up all those on which we are agreed than leave this point in uncertainty.....*

"On this basis, the queen hopes that his very christian majesty will find nothing offensive in the demands..... contained in the accompanying memoir."*

The memoir contained articles proposed by the queen for a suspension of arms between the English

* Corresp. of Lord Bolingbroke, vol. ii. p. 364 et seqq.

and French armies, which were in presence in the Low Countries. Wearied with the delays which the general negociation experienced, England had resolved to treat separately for peace. She, therefore, proposed an armistice of two months, during which *it should be endeavoured at least to conclude the article which regards the separation of the two monarchies.* King Philip V should renounce, *in that space of time, and in all the forms, for himself and for his descendants, the crown of France.* This renunciation should be accepted by the very christian king, and *be ratified in the most solemn manner by the States of the kingdom of France. The succession to the crown was to be adjudged, after the Dauphin and his descendants, to the duke of Berry and his descendants, and successively to the other princes of the house of Bourbon, to the absolute exclusion of king Philip and his.* And it was added: *The duke of Berry and the duke of Orleans shall renounce for them and for their children all right to the crown of Spain; the States of the kingdom shall accept and consent to this renunciation in the manner which shall be most convenient. The above parties shall agree by authentic acts to recognize for successor to the crown of Spain, after king Philip and his descendants, the prince who shall be agreed to in the future treaty of peace.** The ruling thought of lord Bolingbroke was thus to obtain, at once, of the states, or of the legal representative and sovereign authority of the two kingdoms of France and Spain, a precise regulation on the succession of the two crowns; a regulation which should be founded on the respective annulment of the rights of successibility of the Spanish princes to the throne of France, and of the French princes to the throne of Spain. By this mode of acting, the English cabinet escaped the reproach of interfering in the exercise of the independent sovereignty of each State, while the great aim of separating the two crowns was perfectly attained.

* See Corresp. of Lord Bolingbroke, vol. ii. pp. 366-67.

The proposition relative to the ratification of the renunciation by the states of the kingdom of France, was refused directly. M. de Torcy replied, on this subject, on the 22nd of June:—

"As his majesty believes he could not give the queen a more evident proof of his absolute confidence, his majesty declares to her that it would be to lose entirely the fruits of a negociation conducted by him happily to the point of conclusion, to insist on the ratification of the states of the kingdom. The states, in France, do not meddle with what regards the succession to the crown; they have neither the power of making nor of abrogating laws. When the kings convoke them, it is stated in the letters that it is for the purpose of hearing the complaints of good and faithful subjects, and of seeking remedies for present evils.

"The examples of past ages," adds M. de Torcy, "have shewn that these sorts of assemblies have almost always produced troubles in the kingdom, and the last states, held in 1614, ended in a civil war. As the king believes he is assured of the true intentions of the queen, his majesty is persuaded that that princess seeks only a surety for the renunciation, and that it is consequently sufficient to indicate one more in conformity with our usages, and which will not be subject to the inconveniences of the assembly of the states, which, not having been convoked for nearly a hundred years, are to a certain degree abolished in the kingdom.

"This surety will be to cause to be published and enregistered, in all the parliaments of the kingdom, the renunciation which the king of Spain shall have made, for him and his descendants, of the crown of France. Edicts and declarations, dressed with these formalities, have the force of laws; the French are accustomed to this usage; they practise it with regard to treaties made with foreign powers; and the intention of the king is to cause at the same time to be withdrawn and taken publicly from the registers of the parliament, the letters patent which his majesty made in favour of the king of Spain, to preserve to him his birthrights, when he left France to go to Madrid. The revocation and annulment of those letters will be the sequel, and as a kind of confirmation, of the renunciation."*

Without discussing the doctrines of M. de Torcy, lord Bolingbroke made no further difficulty; he acknowledged the sufficiency of the registration in all the parliaments; and the course of the negociations was not arrested by this incident.

Nevertheless prince Eugene thwarted, with more obstinacy than ever, the pacific views of the other

* See Corresp. of Lord Bolingbroke, vol. ii. p. 387 et seqq.

powers,* even after the English army had separated from him, in the expectation of a suspension of arms. The marechal de Villars engaged him, on the 24th of July, in the memorable battle of Denain, the success of which had so much influence on the progress of the negociations.

On the 3rd of July, the king of Spain had read to his council a solemn declaration announcing his resolution to facilitate the conclusion of the proposed peace, by the renunciation which was required of him. He would do it, he said, *in order that the Spanish monarchy might be assured to his descendants.*† On the 8th of July he signed a decree, of which the preamble is thus conceived:—

"*The assurance that the crowns of Spain and France should never be placed on one and the same head has been one of the principal and most powerful motives of the war which has afflicted Europe to the present day:* it has been also as the preliminary in the views which have been entertained for peace, and especially in the propositions which have been recently made in England. It is upon that that the foundation of this work has been placed, and it has been judged requisite to establish the certainty that at no time, nor by any incident and event that may be, shall the two monarchies be united in one and the same person; and it is upon this point and upon others that the congress now holding at Utrecht has been agreed to, to treat of the other articles of peace, and regulate them; *during which negociations the unforeseen deaths of the Dauphins having happened, England took the opportunity of carrying her views so far as the prevention and annulment of the effects of any other accident that might again happen.* . . . . .

"That crown has, therefore, proposed that I should renounce, in my name and in that of my descendants, the monarchy of Spain or that of France, *in such sort that,* if I should remain in Spain, no one of my successors could ever succeed to that of France, *and that neither those who reign, or shall reign in France, nor any other prince issued of that family, or who shall be born of it hereafter, nor their descendants, shall ever be capable of succeeding to the crown of Spain.*

"I hesitated not a single instant as to the part which I had to take.. ...My affection for the Spaniards, gratitude for the obligations I had to them".....&c.

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* Corresp. of Lord Bolingbroke, vol. ii. pp. 429-493, *et alibi.*

† See *Actes et mém. de la paix d'Utrecht,* Lamberty, Dumont, &c.

We may remark that, in this preamble, king Philip V does not speak of succession, nor of the other modes by which the crown of Spain might be reached or received. Nevertheless, as upon the terms of these renunciations it has been attempted to found a perpetual inability for the descendants of the princes renouncing ever to receive the crown of Spain, we think it may be asked in virtue of what right these princes could have deprived their descendants of the chances which might fall to them by consequence of other titles or other rights than those which their authors had renounced?

This strikes us the more, when we consider that Philip V himself occupied the throne of Spain in spite of a solemn renunciation converted into a law of the state,* since he was great-grandson of that infanta Anne of Austria, who, in becoming queen of France, had herself renounced the crown of Spain, for herself and her descendants *for ever*, in the terms which were literally reproduced in the *subsequent* renunciations, and which are identically those on which it is now attempted to found the perpetual exclusion of all the princes and princesses issued from the princes who signed the renunciations. Thus, since the renunciation of Anne of Austria did not hinder Philip V from occupying the throne of Spain, we are justified in saying that exorbitant clauses, and which quit the limits of common right, become always definitively purely comminatory, when they overshoot the aim of the transaction.

As soon as this point of the renunciations was arranged, lord Bolingbroke came in person to Fontainebleau, to continue the negociations, for the conference was really between him and M. de Torcy. He was well received by the king.† They immediately occupied themselves with a very important point,—the choice of the prince who was to take the place and

* See above, p. 15.

† See in the Corresp. of Lord Bolingbroke, vol. iii. p. 36, a letter of the 26th Aug. from Louis XIV to Queen Anne.

degree of the dukes of Berry and Orleans, in the hereditary scale of the Spanish successibility. It was agreed that it should be the duke of Savoy. The word *substitution* is here important, for it determines the precise design of the acts of renunciation, and their exclusively *successoral* aim, if I may use the expression. Now, it was this word *substitution* which was employed between M. de Torcy and lord Bolingbroke, in the text of the convention, concluded between them, at Fontainebleau, on the 21st of August.

"The *substitution* of the duke of Savoy and his family to the crown of Spain and the Indies shall be made at the time that the article which regards the union of the two monarchies shall receive its accomplishment; this *substitution* shall be inserted in all the acts of renunciation, as well of the king of Spain as of the dukes of Berry and Orleans. It shall be recognized by his very Christian majesty, *as well as by the cortes of Spain*," &c.

These same terms were used subsequently in the particular treaty concluded at Utrecht, the 11th of April, 1713, between France and Savoy. The very Christian king there consented that in default of *descendants* of his Catholic majesty, the succession should pass to the duke of Savoy.*

It was then a right of succession which was opened to the duke of Savoy, by the power competent, that is the king of Spain and the cortes, in the case where the descent of Philip V should be completely exhausted, as had been recently the case with the masculine line of the Spanish branch of Hapsburg.†

The masculine and feminine descent of Philip V had the priority; its total extinction could alone make way for the claim of the house of Savoy to mount the throne of Spain. The question of the marriages of the descendants was the object of no discussion, neither at that epoch nor at any other, down to our days. It would be vain to say that it was not foreseen; it could not but be foreseen. But it is clear that Europe

* Art. 6 of the treaty. See *Actes et mém.* &c. tom. ii. p. 528.

† See the Corresp. of Lord Bolingbroke, vol. ii. p. 446, et seqq. to vol. iii. p. 12, where the minute of the convention alluded to will be found.

claimed no right or interest to interfere in that affair, but considered it as being beyond her competency. In fact, it was sufficient for Europe that the case of the union of the crowns could not offer itself, and the guarantees given in this regard appeared to all entirely sufficient.

Besides, the negociations of Utrecht cannot be brought down to the level of a private agreement on a partition of patrimony. The grand question at Utrecht was the equilibrium of powers and of states; the European interest, and not the private interest of families. The object was to reconcile the respect due to the sovereign independence of states with that which the general safety of Europe might require of them.

Thus, Europe only required that the separation which had always existed between France and Spain should be assured for ever, and that the two states should continue to form two distinct sovereignties. This is the only question truly political and European which was treated and resolved at Utrecht. It was scrupulously kept within these limits. In fact, the marriage of a princess of the branch of Orleans, daughter of the very prince who had signed the renunciation, with the eldest son of Philip V (a marriage made only eight years after the treaty of Utrecht), and the marriage of two daughters of Philip V, the one betrothed to king Louis XV himself, the other married to the dauphin his son, caused neither alarm nor uneasiness in Europe.

It was right therefore to keep silence on this point at Utrecht, and to consider the provision of the *matrimonial conventions*, put forward at the Hague in 1709, when the intention was manifested of excluding the whole family, as a thing without meaning in 1713 at Utrecht, the moment Europe gave its assent that the house of Bourbon should occupy the throne of Spain and there perpetuate its posterity.

And this is superabundantly proved by the *specific demands* of Holland relating to the sovereignty of the

Low Countries; demands to which Louis XIV gave his adhesion by the particular treaty concluded at Utrecht, the 11th of April 1713, between France and Holland, in which we read :—

"It is also agreed that no province, town, fort, or place of the said Spanish Netherlands...can fall to the crown of France, *nor to any prince or princess of the house or line of France*, by virtue of any grant, sale, exchange, *matrimonial convention*, exclusion by will or *ab intestat*, or under any other title that may be, nor be placed in any manner whatever in the power...*of any prince or* PRINCESS of the house or line of France."*

It was not therefore through forgetfulness that they abstained, in the treaties of Utrecht, from considering the cases of succession to the throne of Spain by way of marriages; and since this mode of transmission is spoken of with regard to the Low Countries, and it is not spoken of with regard to Spain, it is clear that the desire was in one case to prohibit it and in the other not. The stipulation relative to the Low Countries had an interest which would never have been attached to an analogous convention relative to Spain; for, for this latter kingdom, it was only the object to avoid, not, as for the Low Countries, the occupation by France and by the house of Bourbon, but merely the reunion of the two crowns of France and Spain on one single head of that royal family.

The queen of England therefore had rightly said to her parliament, the 17th of June 1712, that France and Spain would remain *separated as much as possible.* They could not be more so, from the moment that the agnates of France and Spain had no longer of themselves any right on the succession of their respective crowns; but the separation of the house of Bourbon into two distinct houses could not hinder new marriages from creating for them new rights.

The suspension of arms between France and England having been signed at Fontainebleau by lord Bolingbroke and M. de Torcy, on the 19th of August

* See article 14 of the treaty. *Actes et mém.* &c. tom. iii. p. 21.

1712,* the English minister returned immediately to London, and the negociation continued to be treated by correspondence.

The solemnity of the renunciations remained to be accomplished, and this operation gave place to some incidents which it is well to know. The civilians of Oxford had been consulted by the English cabinet in the digesting of these acts. But when their observations were communicated to M. de Torcy, that minister refused to admit them. In fact, the Oxford doctors substituted more than necessary. They required the enumeration, in the renunciation of the king of Spain, not only of the dukes of Berry and Orleans, but also of each of the French princes of the most distant branches and degrees. M. de Torcy refused to subscribe to their desire. *It was*, he said, *of great consequence to France* not to admit this enumeration. Lord Bolingbroke replied, on the 27th of September, 1712 :—

"The observations made by the civilians have been placed in the margin of the project of the act of renunciation delivered to Mr. Lexington (English ambassador at Madrid), and that on which he is to lay particular stress is the enumeration of the princes of the blood of France.

"*I wish with all my heart these quibbling lawyers had never been consulted*, and as far as I am able to judge, the clauses which have been drawn up in Spain are as strong and as clear as those which these gentlemen wish inserted. But I confess at the same time that I do not well comprehend the objections against this enumeration, as I find them explained in the dispatch of Mr. Prior to the earl of Dartmouth. It is certain that in an act which forms the foundation of the peace and which is to preserve the tranquillity of Europe in ages to come, *it is much more pardonable to admit expressions that are superfluous* than to neglect the least word that may make it clearer or stronger."†

Lord Bolingbroke expressed the same opinion to Prior, in a letter written on the 29th of September. The English cabinet was always anxious to have a more solemn declaration, by the competent powers, in

* See Dumont, *loc. cit.* p. 308, and *Actes et mém.* tom. ii. p. 59 et seqq.

† Correspond. of Lord Bolingbroke, pp. 84 and 93.

France and Spain, of the separation of the rights of successibility. In consequence, a new memoir was drawn up, in the name of the English cabinet, on the question proposed; and, on the 14th October 1714, the following note was presented by Prior to M. de Torcy, who showed resistance, from a sentiment of national susceptibility, peculiar to the lofty character of Louis XIV. We read in it :—

"As to the objection that Philip V, *being a foreign prince*, should take upon him, by this nomination, to regulate in some sort the succession to the crown of France, the answer is evident....It is found absolutely necessary to name in the legitimate order to the succession of the crown of France, in virtue of the renunciation, for the act would appear very imperfect which should say negatively that Philip and his descendants renounce the crown of France, if the princes who are called to it in virtue of the same act were not positively named in it....

"In the act itself, it is declared in general terms that Philip V cedes his right to all the branches of the royal family of France, even to the princes most distant. In naming the nearest princes who must succeed more immediately to this crown, he cannot be considered to attribute to them any other right *than that which falls to them in the order of blood, by means of the renunciation.... He consents that his right shall be regarded as passed and transmitted to him who shall be found nearer in degree, immediately after the king, the present dauphin, and their descendants*, and consequently, the case arriving, this right falls directly on the duke of Berry and his descendants for ever, and, in fault of them, on the duke of Orleans and his descendants for ever. We see no difficulty in enunciating their names, since the meaning of the act includes even their nomination."*

When the English cabinet had restrained itself to desire the mention of those of the French princes who had claims on the succession to the crown of Spain, the demand met with no further difficulty; and M. de Torcy replied to Lord Bolingbroke: *Mr. Prior and I have had some contestations on the enumeration which your lawyers wish to make of all the princes of the blood. I believe, nevertheless, that you will find I am right, when you read the project that I have proposed to him.....It gives to the act all the force you desire.*†

* Corresp. of Lord Bolingbroke, tom. iii. p. 145. † *Ibid.* p. 155.

On the 25th of November, 1712, M. de Torcy announced to the English minister that the solemn renunciation of the king of Spain had been approved, and enregistered by the cortes; that the *princes of France, who could have any right to the crown of Spain, had equally renounced it there, and that their renunciations would be similarly enregistered by the cortes.* Lord Bolingbroke showed himself satisfied, and made an excuse for his pertinacity. *You know, without my telling you,* he wrote to his colleague of France, *the nature of our government and the genius of our people, how circumspect we have to be, how many minds we have to keep fair with,* &c.*

Lord Bolingbroke still desired to have the copy of the renunciations of the duke of Berry and the duke of Orleans, before they were solemnly enregistered, as well in France as in Spain; acts, said he, *made to prevent the reunion of the two monarchies;*† and, on the 14th of December, M. de Torcy wrote to him:—

"I send you, according to your wish, the copies of the renunciations of the crown of Spain, made by the duke of Berry, and by the duke of Orleans. *The models of them were drawn up at Madrid,* and, as they had been communicated to the earl of Lexington, I did not doubt but he had sent them to her British majesty. You will find that the terms are no less strong than those of the renunciation of the king of Spain, and that *the same expressions have been employed in the places where they were necessary.*"‡

It appears, from the correspondence of Lord Bolingbroke, that Prior had pointed out the opportunity of requiring a similar renunciation of the house of Condé. But this observation had no result, and could have none, since the house of Condé did not reckon the infanta among its near progenitors, as the house of Orleans did. Consequently, it possessed no right which it could renounce. It could only have been put aside in virtue of a general exclusion of the house of Bourbon, an exclusion of which the demand, made at the Hague in 1709, had not been revived at

* Corresp. de Lord Bolingbroke, tom. iii, p. 192.
† *Ibid.* p. 197. ‡ *Ibid.* p. 224.

Utrecht, being diametrically opposed to the new principle of the negociations.

The house of Condé therefore made no renunciation, a circumstance which affords a further proof that the powers of Europe had completely changed their system with regard to the occupation of the throne of Spain by the house of Bourbon.

The negociations of the peace being so far advanced, Louis XIV sent the duke d'Aumont to London, in quality of ambassador extraordinary; he was received with great ceremony, and, on the 15th of December 1712, he addressed to the queen the following discourse, which respires the spirit and language of the *grand siècle*:—

"Madam, the present is a very illustrious moment. In the most happy and the most brilliant of conjunctures, I have the honour to offer to your majesty, on the part of the king, my master, the public testimony of all the sentiments which attach him to your sacred person.

"The events of a long and terrible war have taken nothing from the friendship with which he has been inspired by the bonds of blood, *(queen Anne was grand-daughter of Henrietta of France, daughter of Henry IV)*, nor from that just consideration which is due to personal qualities, more respectable than the majesty of titles and than all the power of the throne.

"These sentiments, madam, have been mutual, and the intelligence which they have established between the two crowns, has scattered parties, disarmed the nations of the earth, changed the face of states, given new kings to Europe, and affirmed, if I may dare to say it, your majesty's glory.

"By the conditions of which you have been the arbiter, you procure the happiness of your subjects, the advantage of your allies, and crown at the same time the great and memorable events of your reign, of which antiquity has shown no example, not even on the throne on which Elizabeth reigned.

"France, accustomed to find, in her misfortunes, glory and resources, will not the less bless the counsels of your majesty. She has received, with warm acclamations, the news of a peace, the moderation and good faith of which, emulously exercised on both sides, has cut through all difficulties and removed all obstacles.

"These virtues, so rare and so foreign in treaties, have been reciprocal in the course of the late negociation, and they are become the presage of a firm and lasting union, which places in the hands of your majesty, and in those of the king, my master, the balance of all the powers of Europe."*

* Flassan, *loc. cit.*, tom. iv. p. 338.

On the 15th of March following, the parliament of Paris enregistered, in a solemn sitting, the letters patent given by the king, as well for the admission of the renunciations of Philip V and of the dukes of Berry and Orleans, as for the withdrawal of the letters of the year 1700, which had reserved to the duke of Anjou his right of succession to the crown of France.

The parliament here took the place of the states of the kingdom, and the *constitutional* forms of the two monarchies of France and Spain were thus observed with regularity, in the new arrangement of the order of successibility to the thrones of the two states. The hand of the foreigner made no parade of itself, in this grand act of sovereignty of the two countries.* We may proclaim it, that, perhaps on no occasion, have England and France exchanged by their ministers more courtesy, more noble behaviour towards each other, or more confidence.

In fine, all difficulties having been overcome, this grand act of the treaty of Utrecht was consummated in the memorable day of the 11th of April 1712. A last attempt having been made with the emperor's plenipotentiary, he answered by a refusal, and quitted Utrecht. Then each of the separate treaties, concluded between the belligerents or interested parties, was brought for signature.

At noon, the plenipotentiaries of France went to the ambassadors of England and signed with them the treaty, which had long been agreed upon by their sovereigns, but the formal signature of which had been deferred till that day.

Two hours afterwards, the plenipotentiaries of Savoy, whose affairs had also been long arranged, repaired to the same place and signed their treaty with France. Those of Portugal presented themselves at eight o'clock in the evening. Those of Spain came after; but Holland did not terminate immediately with them her regulation of affairs.

* Corresp. de Bolingbroke, tom. iii. p. 509, et seqq.

Those of Prussia only signed at midnight; and, an hour after, arrived the deputies of the States General, delayed, because the difficulties relative to their treaty of commerce with France had hindered them from preparing earlier a clean copy of the minute.

With the States General it was agreed that Holland should receive as a deposit the portion of the Low Countries belonging to Spain, to deliver it to Austria, when it should please that power to adhere to the convention of peace. France received back Lille and the frontier places she had lost. The Spanish monarchy was guaranteed to Philip V, *and to his descendants*, and a treaty of commerce favourable to Holland was stipulated and accepted.

With Savoy, a better definition of the limits of the Alpine provinces was agreed upon. The duke obtained, with the dignity of king, Sicily, which he afterwards exchanged for Sardinia; and he was promised the succession of Spain on the extinction of the descent of Philip V.

With Portugal, France agreed to a new arrangement of boundaries of her colonies in South America.

With Prussia, the king was acknowledged by France in that quality, and as sovereign of the county of Neufchâtel; on his part he ceded to France his hereditary rights on the principality of Orange. The king of Spain ceded to him the duchy of Gueldres.

As to Spain, she concluded two treaties, one with England, the other with Savoy. To England she ceded Gibraltar and the island of Minorca, and, in virtue of a particular convention, she gave her, for thirty years, the privilege of importing annually 4,800 negroes in America; she gave her the right of entry to Portobello, and the guarantee which she would concede to no other nation of privilege for the commerce of the Indies.

With Savoy, Spain ratified the conventions admitted by France.

Spain treated also with Portugal, and granted her commercial advantages.

But one of the most important of the acts passed at Utrecht, was the treaty concluded between France and England. It was composed in Latin and in French, and will be found printed textually in the Appendix, No. XI. France recognised the protestant succession to the crown of England, in the house of Hanover, and consented to remove the pretender from the French territory; she renewed the absolute renunciation of the crown of Spain; and moreover, she signed a particular treaty of commerce with England.

Thus France acquired the security of her southern boundaries, and the guarantee of the Spanish succession in favour of Philip V, *and of his descendants.* Article 6 of the treaty is thus expressed:—

"Inasmuch as the war, to which the present peace is to put an end, was excited chiefly because the safety and liberty of Europe could not absolutely suffer that the crowns of France and Spain should be united on one head, and that at the instance of her British majesty, and by the consent as well of his very Christian majesty, as of his Catholic majesty, the means have at length been found, by an effort of Divine providence, to prevent this evil for the time to come, by the renunciations, expressed in the best forms, and made in the most solemn manner, the tenor of which follows hereafter.*

"It being sufficiently provided by the renunciation relative thereto, which must be eternally a law inviolable and always observed, that the Catholic king, *nor any prince of his posterity*, can ever aspire to or arrive at the crown of France; and, on another side, the reciprocal renunciations of the crown of Spain made by France, as well as the other acts which establish the hereditary succession to the crown of France, which tend to the same end, *having as sufficiently provided that the crowns of France and Spain remain separate and disunited*, so that the aforesaid renunciations and the other transactions regarding

* See these renunciations in the Appendix, Nos. IX. and X.

them subsisting in their vigour and being observed in good faith, these crowns can never be united.

"Thus the most serene very Christian king, and the most serene queen of Great Britain, engage themselves solemnly and by their royal word, one to the other, that neither they nor their heirs and successors will ever do anything, or will permit that anything be ever done, capable of hindering the renunciations and other transactions abovesaid from having their full and entire effect; on the contrary, their royal majesties will take a sincere care and will do their efforts to the end that nothing infringe this foundation of the public safety, or shake it."

The second article of the treaty between Great Britain and Spain is thus expressed:—

"And, since the war which has just been happily terminated by this peace was undertaken at the beginning, and has been continued so long, with such animosity and immense expenditure, as well as with an inexpressible effusion of blood, on account of the imminent danger with which the liberty and the safety of all Europe were threatened *by the too close conjunction of the kingdoms of Spain and France*, and that, to efface the uneasinesses and suspicions with which people's minds have been agitated, and restore the peace and tranquillity of Christendom by a just equilibrium of power, which is the best and most solid foundation of a mutual friendship and a lasting union on both parts, the Catholic king and the very Christian king have consented that care shall be taken, by sufficient precautions, *to hinder the kingdoms of Spain and France from being ever united under the same domination, or that one and the same person can ever become king of the same kingdoms.* To this end, his Catholic majesty has renounced, for himself, his heirs and successors, in the most solemn manner, all rights, titles, and pretentions which he might have to the crown of France.

"And his said Catholic majesty renews and confirms by this article the solemn renunciation above-

mentioned, made on his side; and, as it has obtained the force of a general and fundamental law, his said majesty engages himself anew, in the most sacred manner, to observe it and cause it to be observed inviolably; and also he will labour with all possible ardour to enforce the observation irrevocably of the other renunciations, and the execution of them, as well on the part of Spain as on that of France, because, *as long as they shall subsist and be in full force and faithfully observed on both parts, as well as the other conventions made in this regard, the crowns of Spain and France will be so separated and divided one from the other, that they can never be united.*"*

The same dispositions are found repeated in article 31 of the treaty between France and Holland, in terms the more remarkable, because it is precisely this treaty which excludes the house of Bourbon from all sovereignty of the Low Countries, by whatever way it may arrive at it, *succession, purchase, or matrimonial convention.*† The same question is reproduced in article 3 of the treaty concluded between Spain and Savoy, as well as in the treaty concluded between Holland and Spain, and which was only signed in 1714, on the 26th of June, at Utrecht.‡

The great aim of England and of Europe in this treaty, was then uniquely to hinder for ever France from acquiring too preponderating a power in the west, by the union of the two monarchies; but the grand aim of France was to assure herself of the friendship of Spain, without attacking her independence and her national interests. The two clauses of the separation of the two crowns, and of the establishment of a branch of the house of Bourbon in Spain, are intimately correlative.

The Spanish and French interest having thus prevailed, the treaty of Utrecht was, with regard to the house of France, what the treaty of Westphalia had been for the house of Austria: a limit.

* See Dumont, *loc. cit.* p. 320. † *Ibid.* p. 431.
‡ Dumont, *ibid.* p. 394.

But at the same time that it imposed a limit on France, the treaty of Utrecht gave her a right; that of having a friendly dynasty on the throne of Spain.

We know that after the peace of Utrecht, the war continued on the Rhine between the emperor and France; and it was not till a year had passed, that the treaty of Rastadt put an end to hostilities. The emperor accepted the conditions which had been made by his old allies.

§ VII.—OF THE RENUNCIATIONS.

It remains now to examine the intrinsic and theoretic value of the renunciations, what is their effect, and what may be their legal and political consequences. As to their intrinsic value, we need hardly be surprised that the English opposition peers believed they had good reasons, in 1712, for sustaining that in strict right these renunciations were obligatory only with regard to the princes who signed them, but that they ceased to be so for their descendants; in fact, the signatory princes had neither title nor right to arrest towards their descendants the transmission of the rights of succession which they had themselves only received from their ancestors charged with a forced transmission to their descendents, in conformity to the destinations prescribed by the laws of the country. There is, to prove it, a very striking example, which is only two years posterior to the treaty of Utrecht, and which demonstrates that, in our modern monarchies, even when they were still submitted to the regime of absolute government, the personal will of the kings was without power to overthrow or change the order of successibility to the throne, and that it was equally without power to regulate the deposit of the royal authority in case of minority. This example was given in 1715 by one of the princes who signed the renunciations, by the Duke of Orleans himself, when, in the bosom of the court of peers and of the parliament of Paris, he appealed against the clauses of the will of Louis XIV, and when he was there proclaimed

regent of the kingdom amid the acclamations of all France. The law voted, in 1842, by the French chambers, has anew solemnly consecrated the principle recognised in 1715.

It is incontestible that it appertains to no sovereign, in our modern monarchies, to transmit the succession of the crown to one of his younger sons, to the detriment of his elder son; it is certain, *a fortiori*, that he could still less shut them out altogether, and *en masse*, personally and for ever (especially by an isolated act of his simple will), from their eventual rights of succession to the throne. He wears it himself only in virtue of the exercise of the same rights with which his descendants are invested, *ipso jure*, as he was himself, by the laws, customs, and regulations of his kingdom, when he mounted the throne.

But it must be acknowledged that, whatever may be the strictness of the right, it is often as dangerous and impossible to apply it in its whole extent, to the direction of public affairs, as to seek, in the cold theories of the mathematical sciences, the means of counterpoising the passions of man, to maintain the equilibrium in the movements of social order.

Such was without doubt the difficulty of those who were met at Utrecht to put an end to that long series of wars, of misfortunes, and of ruin, which the folly of ambitions had drawn upon Europe. The vows of all the states called for a termination of it, by mutual concessions which might prevent the return of these calamities, as far as human wisdom could provide. On all parts, they were persuaded that the only means of ending the difficulty was to assure at the same time the throne of Spain to Philip V and his descendants, and to separate irrevocably that crown from the crown of France. It was that which suggested the idea of cutting the house of Bourbon asunder into a *house or branch of France*, and a *house or branch of Spain;* and no other means were seen of putting this idea in practice but that of obtaining from the French princes who were to become princes

of Spain, a renunciation of their eventual rights on the succession of the crown of France; and, *vice versa*, to obtain of the princes who were to remain in France the renunciation of their eventual rights on the succession of the crown of Spain..

Independently of the difficulties of strict right presented by the theory of the renunciations, and at which it was forbidden by irresistible political considerations to stop, there was a practical difficulty, embarrassing enough, in the difference of the laws of succession to the throne of France and to the throne of Spain. This difference consisted in the circumstance that the French law (the Salic law) said "*that the crown descended from male to male by order of primogeniture, following the ancient law of the kingdom of the Franks, always observed in this point*"; while in Spain, the law of succession which was in vigour at the epoch of the negociations of the treaty of Utrecht,—1713, was still that called of *la siete partidas*, already cited, according to which "*the sons of the kings succeeded to the crown by order of primogeniture, and in preference to their sisters, but that, when the kings only left daughters, they succeeded to the crown by order of primogeniture, and in preference to their uncles.*"

Philip V perceived rightly that, if the French law assured the exclusive transmission of the crown of France in the house which had worn it so many centuries, to the exclusion of all other, the Spanish law, on the contrary, must necessarily call to the throne, at no distant epochs, queens, in their own right, whose marriages would have the inevitable consequence of depriving his family of that surety of the right of succession which the French law guaranteed. Therefore, before giving his assent to the renunciation required of him, Philip V assembled the cortes of the kingdom, and, in notifying to them his resolution of remaining faithful to the Spaniards, as the Spaniards had done towards him, he asked them to modify the law of succession to the kingdom in Spain,

in such sort that the rights of his family on that crown might obtain the same guarantee, and might be rendered similar to those which it had on the succession to the crown of France, and which he was ready to renounce, to devote himself and his descendants for ever to Spain.

Philip's demand was acceded to by acclamation, and the cortes voted the new law which only differed from the law of France in the circumstance that, instead of pronouncing *the perpetual exclusion of women and their descent*, it stipulated, on the contrary, that in case of extinction of the totality of the masculine descent of Philip V, his feminine descent should be called to succeed to the crown of Spain, until the extinction of that descent, and that then only the house of Savoy should be substituted for it.

Thus it was this law which made compensation in Spain to Philip V and his family for the advantages which he renounced in France, and which made compensation in France to the dukes of Berry and Orleans for the advantages which they renounced in Spain, since the transplanting into Spain of Philip V and his lineage brought them so much nearer to the succession to the throne of France. This law and the reciprocal renunciations of the branches of the house of Bourbon were then connected, and ought to be inseparable in their results, as they had been in their origin. The different acts ought, therefore, to be considered as one and the same act, the wise combination of which went to dissipate all fears, calm the passions, and guarantee to all Europe a long duration of that peace and of that repose of which all nations felt the want.

These acts were inserted textually in the treaty of Utrecht, but only as *annexations*, and not as an *integral part*, seeing that the princes who had made them were not themselves *contracting parties in the treaty*, and that Philip V, *although a contracting party in quality of king of Spain*, only renounced,

and in fact could only renounce, his rights to the succession of the crown of France in quality of *duke of Anjou*.

The texts of these renunciations are as follows:

"Be it notorious and manifest to the kings, princes, potentates, republics, communities, and private persons, who are and who shall be in ages to come, that one of the principal foundations of the treaties of peace to be made between the crown of Spain and that of France on one part, and that of England on the other, to arrive at a general peace, being to assure for ever the universal weal and repose of Europe, and *to establish an equilibrium between the powers, so that it may not arrive, that several being joined together in one, the balance of equality which it is the object to assure, leans to the advantage of one of those powers, to the risk and damage of the others*, it has been proposed and solicited by England, and it has been agreed on my part and on that of the king my grandfather, that, *to avoid, at any time whatever, the union of this monarchy with that of France*, and to hinder this from happening in any case, reciprocal renunciations should be made, for me and my descendants, *of the succession to the monarchy of France*, the case happening; and on the part of the princes of France, and all their line, present and to come, *of the succession to the monarchy of Spain*, making reciprocally a voluntary abdication of *all rights that the two royal houses of Spain and France could have to succeed each other mutually*, separating, by the just means of my renunciation, my branch from the royal stock of France, and all the branches of France from the stock of the blood royal of Spain; taking measures also, *according to the fundamental and perpetual maxim of the equilibrium of the powers of Europe*, in order to avoid, *in all cases imaginable, the union of the monarchy of Spain with that of France*, and to prevent the inconvenience which would arise, if, *in default of my issue*, the case happened that the monarchy of Spain should fall back to the house of Austria, whose states and their dependencies, even without the union of the empire, would render her formidable; a motive which caused, with reason, at a former time, the separation of the hereditary states of the house of Austria from the body of the Spanish monarchy.

"For this effect, it has been agreed and accorded by England, with me and with the king my grandfather, that in my default *and that of my descendants*, the duke of Savoy *should be called to the succession of that monarchy*, himself, his children and descendants .....descendants of the infanta Catherine, daughter of Philip II, and who have a clear and acknowledged right.....And *it shall not be in the power of any one of the parties to alter this equilibrium by any contract of renunciation or retrocession*, since the same reason which leads to the establishment of this equilibrium, *must render it permanent, forming a fundamental constitution* which regulates, by an unalterable law, the succession for the future.

"I have resolved, in consequence of what is stated above, for the love I bear the Spaniards, for the gratitude I feel for what I

owe to them, for the frequent experience I have made of their fidelity, and to show thankfulness to Divine providence..... to abdicate, for myself and for all my descendants, the right of succeeding to the crown of France, desiring to live and die with my beloved and faithful Spaniards, leaving *to all my descent* the inseparable bond of their fidelity and love, *in order that this deliberation may have the effect which it ought to have, and to cause the cessation of that which has been considered as one of the principal motives of the war* which has till now afflicted Europe.

"Of my own movements of my free, frank, and pure will, I Don Philip, by the Grace of God king of Castille and Leon..... &c. &c.....I renounce, by the present act, at all times and for ever, for myself and for my heirs and successors, *all pretensions, rights, and titles that I or any other of my descendants whatever* may have from the present time, or may have at any future time whatever, *to the succession of the crown of France.* I abandon them and desist from it for myself and for them, and I declare myself and hold myself for excluded and separated, me and my children, heirs, and descendants, perpetually.....*from the right of succeeding to the crown of France.*

"I will and consent, for myself and for my descendants, that from the present time this right be regarded and considered as passed and transferred to the duke of Berry my brother, and to his male children and descendants, born in legitimate marriage, and, in default of his masculine heirs, to the duke of Orleans, my uncle, and to his male children and descendants, born in legitimate marriage; and in default of his heirs, to my cousin the duke of Bourbon, and to his male children and descendants born in legitimate marriage; and successively to all the princes of the blood of France, their male children and descendants, at all times and for ever, according to the rank and order in which they shall be called to the crown by the right of their birth.

"I especially strip myself of and desist from the rights which might appertain to me by the letters patent or acts by which the king my grandfather preserved to me the right of succession to the crown of France, which letters patent were given at Versailles, in the month of December of the year 1700, and enregistered in the parliament. I will that they be not capable of serving for a foundation for the effects therein provided. I reject and renounce them, and regard them as nul, of no value, as if they had never been given.

"I promise and oblige myself on the faith and word of a king that, on my part and on that of my said children and descendants, born and to be born, I will procure the observance and accomplishment of this act, without permitting or consenting to any direct infraction of it, in whole or in part."

Let us now read the renunciation of the Duke of Orleans:—

Renunciation with oath of Philip, grandson of France, duke of Orleans, of the crown of Spain, and of all hope of future succession to it, himself, his children or descendants.

(Done at the Palais-Royal, at Paris, the 19th of November, 1712.)

Philip, grandson of France, duke of Orleans, of Valois, of Chartres, and of Nemours: to all kings, princes, republics, potentates, communities, and to all persons, as well present as future, we make known, by these presents, that the fear of the union of the crowns of France and Spain, having been the principal motive of the present war, and the other powers of Europe having always apprehended lest these two crowns should be on one and the same head, it has been placed as a foundation of the peace now in treaty, and which it is hoped will be more and more cemented, for the repose of so many states which have sacrificed themselves, as so many victims, in opposing the danger with which they believed themselves threatened, that it was necessary to establish a kind of equality and equilibrium among the princes who were in dispute, and separate for ever, in an irrevocable manner, the rights which they claimed to have and which they defended by force of arms, with a reciprocal carnage on both parts.

That, with the view of establishing this equality, the queen of Great Britain has proposed, and at her instance it has been agreed by the king our very-honoured lord and uncle, and by the Catholic king our very dear nephew, that, to avoid, at any time whatever, the union of the crowns of France and Spain, there shall be made reciprocal renunciations; namely, by the Catholic king Philip V, our nephew, for himself and for all his descendants, of the succession to the crown of France, as also by the duke of Berry, our very dear nephew, and by us, for us and for all our descendants, of the crown of Spain; on condition also that the house of Austria, or any of its descendants, shall not be able to succeed to the crown of Spain, because that house, even without the union of the empire, would be formidable, if she added a new power to her ancient dominions, and consequently that equilibrium which it is designed to establish, for the good of all the princes and states of Europe, would cease. Now, it is certain that without this equilibrium, the states suffer the weight of their own greatness, or envy engages their neighbours to make alliances to attack them and reduce them to the point that these great powers inspire less fear and cannot aspire to universal monarchy.

To arrive at the end proposed, and by reason of his Catholic majesty having on his part made his renunciation on the fifth of the present month, we consent that in default of Philip V, our nephew, and of his descendants, the crown of Spain pass to the house of the duke of Savoy, whose rights are clear and acknowledged; inasmuch as he is descended from the infanta Catherine, daughter of Philip II, and as he is called by the other kings his successors; so that his right to the succession of Spain is incontestable.

And desiring on our side to concur in the glorious end proposed,

of establishing public tranquillity, and preventing the fears which might be caused by the rights of our birth, or any others which might appertain to us, we have resolved to make this desistment, this abdication, and this renunciation of all our rights, for us and in the name of all our successors and descendants. And for accomplishment of this resolution, which we have taken of our pure, free, and frank will, we declare and hold ourselves, from the present moment, us, our children and descendants, for excluded and incapable, absolutely and for ever, and without limitation or distinction of persons, degrees, and sex, of all action, of all right to the succession of the crown of Spain. We will and consent for ourselves and our descendants that, henceforth and for ever, we be held, us and ours, for excluded, unable, and incapable, in whatever degree we may be found, and in whatever manner the succession may come to our line, and to all the others, either of the house of France, or of that of Austria, and all the descendants of both houses, who, as it is said and supposed are also to hold themselves for cut off and excluded; and that, for this reason, the succession of the said crown of Spain be considered devolved and transferred to him to whom the succession is to be transferred, in such case, and in whatever time, in sort that we have and hold him for legitimate and true successor, because neither us nor our descendants are to be considered any longer as having any ground of representation active or passive, or as making a continuation of line, effective or contentious, of substance, blood, or quality, or to derive right from our descent, or to count the degrees of queen Anne of Austria, our very honoured lady and grandmother, or of the glorious kings her ancestors; on the contrary; we ratify the renunciation which the said lady queen Anne made, and all the clauses which the kings Philip III and Philip IV inserted in their wills; we renounce equally all the right which may appertain to us and to our children and descendants, in virtue of the declaration made at Madrid, the twenty-ninth of October one thousand seven hundred and three, by Philip V king of Spain, our nephew; and whatever right might appertain to us for us and our descendants, we desist from it and renounce it for ourselves and for them. We promise and oblige ourselves, for us, and our said children and descendants present and to come, to employ ourselves with all our power to cause these presents to be observed and accomplished, without permitting or suffering that, directly or indirectly, they be infringed, either in whole or in part; and we deprive ourselves of all means ordinary or extraordinary which, by common right, or by any special privilege, could appertain to us, our children and descendants; which means we renounce absolutely, and in particular that of the evident, enormous, and very enormous lesion which may be found in the renunciation of the said crown of Spain; and we will that none of the said means serve us, or be able to avail us, and that, if under this pretext or under any other colour, we should wish to obtain possession of the said kingdom of Spain by force of

arms, the war which we should make or excite be held as unjust, unlawful, and unduly undertaken; and that, on the contrary, that which shall be made against us by him who, in virtue of this renunciation would have right to succeed to the crown of Spain, be held for lawful and just, and that all the subjects and peoples of Spain acknowledge him, obey him, defend him, do homage to him, and render the oath of fidelity to him, as their king and legitimate lord.

"And for the greater assurance and surety of all we say and promise, for us and in the name of our successors and descendants, we swear solemnly on the holy gospels contained in this missal, on which we lay our right hand, that we will keep, maintain, and accomplish it in all and for all, and that we will never ask to be released from it; and that if any person ask it, or that it be accorded to us, *propria motu*, we will not make use of it, nor avail ourselves of it; much more, in case that it is accorded to us, we make another oath, that this one shall subsist and remain always, whatever dispensation might be granted us. We swear and promise further that we have neither made nor will make, either in public or in secret, any protestation or contrary reclamation which might hinder what is contained in these presents, or diminish the force of it, and if we had done so, with whatever oath they might be accompanied, they could have neither force, nor virtue, nor produce any effect. And, for the greater surety, we have passed and we pass the present act of renunciation, abdication, and desistment, before Master Antoine Lemoyne and Alexandre Lefèvre, counsellors of the king, notaries, garde-notes and garde-scels, at the Châtelet of Paris, undersigned, in our Palais Royale, the year one thousand seven hundred and twelve, the nineteenth of November, before noon. And to cause to be inserted and enregistered these presents wherever it shall appertain, we have constituted for our attorney, the bearer, and have signed these presents, and the minute of them remains in the possession of the said Lefèvre, notary. Signed, Philip d'Orleans, Lemoyne, and Lefèvre, and at the side, sealed the same day."

We will first call attention to the passage of the renunciation of the duke of Orleans, which has served for a pretext to the protest of the English cabinet againt the marriage of M. the duke of Montpensier with the infanta Luisa Fernanda, and to the induction which has been drawn from it of the inability of the descendants issued from that marriage to succeed ever to the crown of Spain.

"We declare and hold ourselves, from the present moment, us, our children and descendants, for excluded and incapable, absolutely and for ever, and without limitation or distinction of persons, degrees,

and sex, of all action and of all right to the succession of the crown of Spain. We will and consent, for us and our descendants, that henceforth and for ever, we be held, us and ours, for excluded, unable, and incapable, in whatever degree we are found, and in whatever manner the succession may arrive to our line."

If this clause, copied textually from the renunciation of Anne of Austria in 1612, could have a bearing more extended than the perpetual separation of the two monarchies; if its formulas were to have, in fact, this result, of striking an entire race with exclusion and incapacity, this clause would be nothing less than a usurpation of power which no law, divine or human, justifies, and an attack upon the rights of generations to come.

There are unchangeable principles, on the certitude of which the unanimous assent of men has been acquired in all ages. What are the things which can be renounced? Those of which we have the actual and personal disposal. But no man has the right, nor, fortunately, the power, of placing his heirs in a state of general incapacity, and of thus impressing a character of civil death on an indefinite series of generations. Clauses so exorbitant are necessarily thrown into the domain of the clauses of style, which have never been held as obligatory in the *droit commun* of the civilized peoples of Europe.

We ought, therefore, to attach ourselves, in renunciations, only to their determinant causes, and to the end which is to be attained; and this end being only the prohibition of the union of the two crowns, it is evident that the terms of the renunciations ought not and cannot exceed the terms of the treaties themselves.* We must not be astonished at the superfluity

* It is what five treaties have expressed literally, in the clearest manner. I have cited two of the texts, in the preceding paragraph. I will here quote two others. The first is the particular treaty between France and Holland (Utrecht, 11 April, 1713), art. 31:—

"Since it is agreed *that it is absolutely necessary to hinder the*

of useless formulas that have been displayed in these acts; for those who are acquainted with the habits of notarial procedure and practice, such an overflow of clauses of supererogation presents nothing extraordinary. All acts of this kind have been traced mechanically on the same type.

The duke of Orleans, in renouncing for himself and his descendants the rights to the succession of Spain, which he held from queen Anne, placed himself at the same point in which his grandmother was at the moment of her renunciation in 1612, by renouncing the benefit of the decree rendered in 1703 by Philip V and the cortes, which nullified the renunciation of Anne of Austria, and re-established the heirs of that princess in the full enjoyment of the rights which she had renounced. The unique and formal object,

crowns of France and Spain from ever being united on the head of one and the same king, and to provide by this means for the safety and liberty of Europe, and that, at the instances of the queen of Great Britain, and by the consent as well of the very Christian king as of the Catholic king, *means have been found to hinder this union by the renunciations.....*

"And since by the said renunciations and declarations...It has been determined that neither the Catholic king himself, nor any of his descendants, can in future lay claim to the crown...of France.

"And inasmuch as, by the reciprocal renunciations on the part of France...*which tend to the same end,* the two crowns of Spain and France are so separated," &c.

In the treaty passed between Spain and Holland, in 1714, a sequel and integral part of that of Utrecht, we read similarly in art. 37:—

"Since the happy continuation of the peace, as well as the repose and safety of Europe, depend among other circumstances principally upon that, that the two crowns of Spain and France remain always independent of each other, and that they can never be united on the head of one and the same king, and that his Catholic majesty, *to this end,* has renounced, &c.

"And since, on the other side, the princes of the royal house of France have also renounced, for themselves, their heirs and successors for ever, and in the strongest terms, *all right, title, or claim, whatever they may be, to the crown of Spain...*

"*And since thus the two crowns of France and Spain remain always so separated one from the other, that they can never be united.*" (Dumont, *loc. cit.* p. 370 and 431.)

therefore, aimed at by the act of the duke of Orleans, was, the right to the succession of Spain proceeding from Anne of Austria.

These ideas were those of Spain, where the too frequent use of renunciations, and the facility of retracting them, had shaken all confidence in their efficacy; witness the language and profession of faith of Don Louis de Haro to M. de Lionne, in 1659; witness the accession of Philip V, great-grandson of a princess who had renounced, in 1612, the crown of Spain; witness the law of 1703, the benefit of which the duke of Orleans renounced in 1713.

When Charles II, king of Spain, seeing himself without natural heirs, wished to call the descendants of his sister Maria Theresa to succeed him, he considered first that the grand-dauphin, his nephew, and the duke of Burgundy, his grand-nephew, were inevitably called by the French law to succeed to the crown which was then borne by Louis XIV; and he determined to call the duke of Anjou, second son of the grand-dauphin, who not being immediate heir, though invested with an eventual right of succession to the crown of France, averted for the moment the danger of the union of the two crowns on one head.

This wise disposition was in conformity with the interests of Europe, and with the Spanish law. It had the express approbation of Europe at Utrecht. To wish now to do more, would be to renew the quarrel of the will of Charles II, and to recommence Marlborough, without victories.

In a word, whatever may have been the doubts that might have been raised on the theoretic and strict validity of the renunciations, the need of a guarantee of the permanent separation of the two crowns procured a general and legitimate assent to the formulas best calculated to attain this end. But it is certain that the extent of these acts ought to be limited to the rights of which the renouncers were in possession.

We have not spoken of the renunciation of the duke of Berry; for all that has been said on that of

the duke of Orleans applies to it exactly. Neither have we dwelt on the condition inserted in the renunciations relating to Austria; it is unconnected with the present discussion, and was the matter of a subsequent treaty.

It has been pretended that treaties posterior to the treaty of Utrecht contained restrictions still more positive than those already expressed in the renunciations of which we have just spoken. It will be sufficient to cast our eyes on the bare text of these treaties to be convinced that this is not the case. The only design of these treaties, is to corroborate the grand principle of the separation of the two crowns.

We read, in fact, in the treaty of the quadruple alliance of 1718:—

"ART. 1. As it so happens that the only means that could be found to establish a lasting equilibrium in Europe, has appeared to be the establishment of a rule that the kingdoms of Spain and France shall not at any time be united on the head of one and the same person, nor joined together in one body under one and the same reigning line, and that those two monarchies *shall rest perpetually separated;* to confirm this rule so necessary to the public tranquillity, the princes to whom the prerogative of birth could give the right of succeeding in either kingdom have renounced one of the two orders of succession for themselves and their posterity, so that the separation of the two monarchies has passed into a fundamental law of the two states.

"His imperial majesty, wishing to give the last complement to a law so salutary and so necessary, and to take away all pretext of sinister suspicion on his part, declares that he accepts the articles arranged and agreed upon at Utrecht touching the order of succession to the thrones of Spain and France, and renounces, as well for himself as for his descendants and successors of either sex, all rights and claims universally, whatever he might have, on the provinces of the Spanish dominions, of which by the treaty of Utrecht the Catholic king has been recognised the legitimate sovereign and possessor; his imperial majesty promises in consequence to draw up an act of solemn renunciation, and to deliver a formal instrument of it as well to his Catholic majesty as to the contracting parties.

"ART. 2. In execution of the said renunciation, which his imperial majesty has made from attachment to the general security of Europe, and also in consideration of the circumstance that the duke of Orleans has renounced, for himself and his descendants, *his rights and actions on the kingdom of Spain* (JURIBUS ET RATIONIBUS SUIS), on condition that neither the emperor nor any of his descend-

ants shall ever succeed in Spain; his imperial majesty recognizes as legitimate king of Spain, Philip V, and promises to him and to his descent male and female the peaceful possession of the Spanish monarchy.*

Thus, the condition under which these renunciations, as well of Philip V as of the French princes, had been made, found its accomplishment in this treaty. As long as this condition was not fulfilled, that is, the formal renunciation of Austria, the renunciations of the king of Spain and of the French princes were not complete. The known claims of the cabinet of Philip V, directed by Alberoni, were motived on the absence of the renunciation of Austria. The regent wished to take away this pretext, and this was the object of the treaty of the quadruple alliance. Thus, seven years after the peace of Utrecht, the character of this great act was confirmed by an additional treaty concluded between the very powers who had signed it.

The particular character of the renunciations is none the less clearly defined in it. The princes have renounced the right they had by their birth to succeed at once to the throne of the two kingdoms; they have made their choice of one or the other of the two successions, and have only renounced their rights to one or the other of the two crowns, for themselves and their posterity.† It is thus exactly the execution of the will of Charles II. The renunciation of the duke of Orleans is retraced in terms the more precious, because, Regent of France, in 1718, he has himself explained the intention which he had had as duke of Orleans in 1713. He has only renounced the rights which belonged to him, his personal rights and claims, *juribus et rationibus* SUIS.

Nevertheless there still remained many difficulties of execution; a congress was appointed at Cambrai

* See Dumont, tom. vii. part 1, p. 531, and the Appendix No. XII.

† Ii principes quibus nativitatis prærogativa jus in utroque regno succedendi tribuere poterat, uni e duobus, pro se totaque posteritati solemniter renuntiaverunt.

for the year 1721, with the mission to resolve them. But different reasons caused a delay in the signature of a definite treaty between Spain and Austria. This treaty was concluded on the 30th of April 1725, at Vienna. We read in it; art. 1,—That the basis of the peace is the treaty of London of the 2nd August 1718. And, in fact, in articles 2 and 3 are reproduced, literally and textually, *without changing a single word*, articles 2 and 3 of the treaty of 1718.*

Here then is a second and authentic confirmation of the interpretation which forms the basis of our conclusions; an English minister has therefore interpreted the treaty of Utrecht in an erroneous sense, when, in a dispatch which has been communicated to our two chambers, he advances that *the main and real object of the treaty, besides the restoration of peace between the contracting parties, was that, for which the preceding war had been undertaken, and it is truly set forth in the second article of the treaty between Great Britain and Spain, which recites that the war had been undertaken.....on account of the imminent danger with which the liberty and safety of all Europe had been threatened by* THE TOO CLOSE UNION (l'union trop étroite) of the kingdoms of Spain and France.†

The author of the assertion cites but a fragment, and, instead of citing the original text, which is Latin, he gives it in French.

We will produce the text itself, with the excuse for citing Latin; but it may be seen that the *conjunctio arcta*, which the English minister translates by a *union étroite*, was, in the evident intention and even in the letter of the treaty, the *union of the crowns on one head*, which is a different thing from *too close union of the kingdoms of France and Spain.*

"Quando quidem vero bellum cui finis pace hac feliciter a Deo

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* See Dumont, tom. viii. part 2, p. 106.

† Dispatch of Lord Palmerston of the 31st October, 1846. Documents communiqués aux Chambres, p. 71.

impositus est, ab initio susceptum et tot per annos, si summa immensis sumptibus et occisione prope infinita gestum fuerit, propter ingens periculum quod libertati salutique totius Europæ ex nimis arcta regnorum Hispaniæ Galliæque conjunctione impenderet. Quumque ad evellendam ex animis hominum sollicitudinem omnem, suspicionemque de istiusmodi conjunctione et ad firmandam stabiliendamque pacem ac tranquillitatem Christiani orbis, justo potentiæ æquilibrio (quod optimum et maxime solidum mutuæ amicitiæ, et duraturæ undequaque concordiæ fundamentum est) tam rex Catholicus, quam rex Christianissimus, satis justis cautelis provisum esse voluerint, ne regna Hispaniæ et Galliæ unquam sub eodem imperio veniant et uniantur, nec unquam unus et idem utriusque Regni rex fiat; atque eum in finem majestas sua Catholica, pro se, hæredibus et successoribus suis, juri, titulo, pretentionique omnimodæ ad coronam Galliæ solennissime renunciaverit."

If, in spite of the preceding observations, any doubt should still remain, as to the primitive and principal aim of the treaties of Utrecht, it is only necessary to cite art. 6 of the treaty concluded between France and England, which is thus expressed:—

THAT THE WAR WHICH THE PRESENT PEACE IS TO EXTINGUISH, WAS EXCITED PRINCIPALLY BECAUSE THE SAFETY AND LIBERTY OF EUROPE COULD NOT ABSOLUTELY SUFFER THAT THE CROWNS OF FRANCE AND SPAIN SHOULD BE UNITED ON ONE AND THE SAME HEAD.

END.

APPENDIX.

No. I.

LAS SIETE PARTIDAS, 2 PART., TIT. XV., LEY II. (Madrid, 1807, 3 vol. in-4to.)

Como el fijo mayor del rey ha adelantamiento et mayoria sobre los otros sus hermanos.

Mayoria en nascer primero es muy grant señal de amor que muestra Dios á los fijos de los reyes, á aquellos que la da entre los otros sus hermanos que nascen despues dél: ca aquel á quien esta honra quier facer, bien da á entender quel adelanta et le pone sobre los otros por que lo deben obedescer et guardar asi como á padre et á señor. Et que esto sea verdat pruébase por tres razones, la primera naturalmente, la segunda por ley, la tercera por costumbre; sa segunt natura, pues que el padre et la madre cobdician haber linage que herede lo suyo, aquel que primero nasce et llega mas aina para complir lo que ellos desean, por derecho debe seer mas amado dellos, et él lo debe haber: et segunt ley, prueba por lo que dixo nuestro señon Dios á Abrahan quando le mandó como probándolo, que tomase su fijo Isac el primero, que mucho amaba, et le degollase por amor dél; et esto le dixo por dos razones; la una porque aquel era el fijo que él amaba asi como á sí mesmo por lo que desuso diximos, la otra porque Dios le habie escogido por santo quando quiso que nasciese primero, et por eso le mandó que de aquel le feciese sacrificio; ca segunt él dixo á Moyesen en la vieja ley, todo másculo que nasciese primeramente serie llamado cosa santa de Dios. Et que los hermanos le deben tener en logar de padre se muestra porque él ha masdias que ellos, et veno primero al mundo; et quel han de obedescer como á señor se prueba por las palabras que dixo Isac á Jacob su fijo quando le dió la bendicion cuidando que era el mayor; tu serás señor de tus hermanos, et ante tí se tornarán los fijos de tu padre, et al que bendixieres será bendicho, et al que maldixieres cayerle ha la maldicion: onde por todas estas palabras se da á entender que le fijo mayor ha poder

sobre los ortos sus hermanos, asi como padre et señor, et que ellos en aquel logar le deben tener. Otrosi segunt antigua costumbre, como quier que los padres comunalmente habiendo piedat de los otros fijos, non quisieron que el mayor lo hobiese todo, mas que cada uno dellos hobiese su parte; pero con todo eso los homes sabios et entendudos catando el pro comunal de todos, et conosciendo que esta particion non se podrie facer en los regnos que destroidos non fuesen, segunt nuestro señor Iesu Cristo dixo, que todo regno partido astragado serie, tovieron por derecho quel señorio del regno non lo hobiese sinon el fijo mayor despues de la muerte de su padre. Et esto usaron siempre en todas las tierras del mundo do el señorio hobieron por linage, et mayormente en España: ca por escusar muchos males acaescieron et podrien aun seer fechos, posieron que el señorio del regno heredasen siempre aquellos que veniesen por liña derecha, et por ende establescieron que si fijo varon hi non hobiese, la fija mayor heredase el regno, et aun mandaron que si el fijo mayor moriese ante que heredase, si dexase fijo ó fija que hobiese de su muger legítima, que aquel ó aquella lo hobiese, et non otro ninguno; pero se todos estos fallesciesen, debe heredar el regno el mas propinco pariente que hi hobiere seyendo home para ello et non habiendo fecho cosa por que lo debiese perder. Onde por todas estas cosas es el pueblo tenudo de guardar el fijo mayor del rey, con de otra guisa non podrie seer el rey complidamente guardado, si ellos asi non guardasen al regno: et par ende qualquier que contra esto feciese, farie traycion conoscida et debe haber tal pena como desuso es dicha de aquellos que desconoscen señorio al rey.

No. II.

Law passed in the Cortes of Spain, May 10, 1713, *on the order of succession to the Crown in the descendants of the Catholic king, Philip V.—(French translation.)*

J'ordonne que dorénavant la succession de ces Royaumes et de tous ceux qui y sont ou qui y seront réunis, soit et se règle dans la forme suivante. A la fin de mes jours, le prince des Asturies Louis, mon cher fils, succédera à cette couronne, et à sa mort, son fils aîné légitime et ses fils et descendans mâles legitimes et en ligne directe légitime, nés tous en mariage constant légitime suivant l'ordre de primogéniture et droit de représentation, conformément à la loi de Toro; et, au défaut du fils aîné du Prince et de tous ses descendans mâles descendant de mâles qui ont à

succéder selon l'ordre ci-dessus, le second fils légitime du Prince succédera et ses descendans mâles descendant de mâles légitimes et dans la ligne directe légitime, tous nés en constant légitime mariage, suivant le même ordre de primogéniture et les mêmes règles de représentation, sans aucune différence ; et, au défaut de tous les descendans mâles descendant de mâles du second fils du Prince, le troisième fils succédera, et le quatrième, et les autres qui seront légitimes et leurs fils et descendans mâles de descendans mâles pareillement légitimes et en ligne directe légitime, et tous nés en constant légitime mariage, suivant le même ordre jusqu'à l'extinction et la fin des lignes mâles de chacun d'eux ; observant toujours à la rigueur l'agnation et l'ordre de primogéniture avec le droit de représentation, préférant toujours les lignes premières et antérieures à leurs postérieures. Et, au défaut de tous les descendans mâles et lignes directes de mâles en mâles du Prince, l'infant Philippe, mon cher fils, succédera à ces Royaumes et à cette Couronne ; et, à son défaut, ses fils et descendans mâles de descendans mâles légitimes et en ligne directe légitime, nés en mariage constant légitime ; et l'on observera et gardera en tout le même ordre de succession cy-dessus exprimé pour les descendans mâles du Prince; et, au défaut de l'Infant et de ses fils en descendans mâles descendant de males, la succession sera dévolue, suivant les mêmes règles et le même ordre de primogéniture et de représentation, aux autres fils que j'aurai de degré en degré, préférant l'aîné au cadet, et respectivement ses fils et descendans mâles de descendans mâles légitimes et en ligne directe légitime, nés tous en constant légitime mariage, observant ponctuellement à leur égard l'agnation rigoureuse, et préferant toujours les lignes masculines premières et antérieures aux postérieures, et jusqu'à ce qu'elles soient finies et éteintes totalement. Lorsque toutes les lignes masculines du Prince Infant et de mes autres fils et descendans légitimes mâles et descendans de mâles seront éteintes totalement, et que, par conséquent, il ne restera aucun mâle agnat légitime descendant de moi, à qui puisse tomber la Couronne selon les règlemens ci-dessus, la succession à ces Royaumes appartiendra à la fille ou aux filles nées en mariage constant légitime du dernier régnant mâle, mon agnat, en qui aura fini la ligne masculine, et dont la mort aura occasionné la vacance, l'une après l'autre, préférant l'aînée à la cadette, et respectivement ses fils et descendans légitimes et en ligne directe, tous nés en mariage constant légitime, observant entre eux l'ordre

de primogéniture et les règles de représentation, en préferant les lignes antérieures aux postérieures, conformément aux lois de ces Royaumes ; ma volonté étant que la fille aînée, ou celui de ses descendans qui, dans le cas où elle serait morte avant, lui succéderait à ces Royaumes, relève, comme chef de ligne, l'agnation rigoureuse entre ses enfans mâles nés en constant légitime mariage et entre leurs descendants légitimes, de manière qu'après la mort de ladite fille aînée ou de celui de ses descendans qui régnerait, la succession appartienne à ses fils nés en constant légitime mariage, l'un après l'autre, et préférant l'aîné au cadet, et respectivement ses fils et descendans mâles descendant de mâles légitimes et dans la ligne directe légitime nés en constant légitime mariage, avec le même ordre de primogéniture, droits de représentation, préférence de ligne et règle d'agnation rigoureuse ci-dessus dits, et qui sont établis entre les fils et descendans mâles du Prince Infant et de mes autres fils. Je veux que la même chose s'observe par rapport à la seconde fille dudit Roy, mon Agnat, qui régenerait le dernier, et par rapport aux autres filles qu'il aurait, de sorte que l'une d'entre elles, quelle qu'elle soit, succédant, selon son rang, à la Couronne, ou celui de ses descendans qui, dans le cas où elle serait morte avant lui, aurait ce droit, on doit relever l'agnation rigoureuse entre ses fils nés en mariage légitime constant, et les descendans mâles descendant de mâles desdits fils légitimes en suivant la ligne directe légitime, nés en mariage constant légitime, la succession entre lesdits fils et leurs descendans mâles descendant de mâles devant se régler ainsi qu'on l'a dit des fils et descendans mâles de la fille aînée, jusqu'à ce que toutes les lignes masculines soient totalement éteintes, en observant les règles de l'agnation rigoureuse. Et, dans le cas où le dernier mâle mon agnat qui régnerait n'aurait point de fille née en mariage constant légitime, ni de descendans légitimes et en ligne légitime, la succession à ces Royaumes appartiendra à la sœur ou aux sœurs qu'il aurait, descendantes de moi légitimement et nées en ligne légitime en mariage constant légitime, l'une après l'autre, préférant l'aînée à la cadette, et respectivement ses fils et descendans légitimes et en ligne directe, tous nés en mariage constant légitime selon le même ordre de primogéniture, préférence de lignes et droits de représentation selon les lois de ces Royaumes, conformément à ce qui est dit ci-dessus de la succession des filles du Roi qui aurait régné le dernier. L'agnation rigoureuse devant également être relevée entre les fils qu'aurait la sœur ou celui de ses descendans qui, dans

le cas où elle serait morte avant lui, succéderait à la Monarchie, nés en mariage constant légitime, et entre les descendans mâles descendant de mâles desdits fils légitimes, nés en ligne directe légitime, en mariage constant légitime, qui devront succéder, selon le même ordre et la même forme ci-dessus expliqués, par rapport aux fils et descendans des filles dudit dernier Roi. Observant toujours les règles de l'agnation rigoureuse. Et, si le dernier Roi n'avait point de sœur ou de sœurs, la succession à la Couronne appartiendra au collatéral descendant de Moi légitimement, et en ligne légitime, qui sera le parent le plus proche dudit dernier Roi, soit qu'il soit mâle ou femelle, et à ses fils et descendans légitimes, et en ligne directe légitime, nés tous en mariage constant légitime, en suivant le même ordre et les mêmes règles selon lesquelles seront appelés les fils et descendans des fils dudit dernier Roi; et dans la personne du dernier parent le plus proche, mâle ou femelle, à qui échoira la succession, on doit relever pareillement l'agnation rigoureuse entre ses fils nés en mariage constant légitime, et entre leurs fils et descendans mâles, descendant de mâles légitimes et nés légitimement en ligne directe, en mariage constant légitime, qui devront succéder selon le même ordre et la même forme que l'on a dit ci-dessus pour les fils des filles du dernier Roi, jusqu'à ce qu'il ne reste plus de mâles descendant de mâles, et que toutes les lignes masculines soient entièrement éteintes. Et dans le cas où le Roi qui aurait régné le dernier n'aurait point de parents collatéraux tels qu'on vient de le dire, mâles ou femelles légitimes, descendant de mes fils et de moi, et en ligne légitime, la succession à la Couronne appartiendra aux filles que j'aurai, nées en mariage constant légitime, l'une après l'autre, préférant l'aînée à la cadette, et respectivement ses fils et descendans nés tous en ligne légitime, en mariage constant légitime, observant entre eux l'ordre de primogéniture et les règles de représentation, en préférant les lignes antérieures aux postérieures, comme il est établi ci-dessus, dans tous les cas où l'on appelle les mâles et les femelles. Ma volonté est pareillement qu'en la personne de quelle que ce soit de mes filles susdites ou de ses descendans qui succèderaient à la Monarchie, dans le cas où elle serait morte avant la vacance du Trône, on relève de la même manière l'agnation rigoureuse entre les fils de ceux qui régneront, nés en mariage constant légitime, et entre leurs fils et descendans mâles de descendans légitimes, et nés tous en ligne directe légitime, en mariage constant légitime, qui devront succéder selon le même ordre et les mêmes règles établis pour les

cas marqués ci-dessus, jusqu'à ce qu'il ne reste plus de mâles descendant de mâles, et que toutes les lignes masculines soient entièrement éteintes. Et la même chose devra être observée toutes les fois que, dans la suite de ma descendance légitime et en ligne légitime, se présentera le cas où une femelle ou descendant mâle de femelle arriverait à la succession de cette monarchie, mon intention royale étant que, autant qu'il se pourra, ladite succession s'établisse et coure en suivant les règles de l'agnation rigoureuse. Et, dans le cas où toute ma descendance légitime, de mâles en femelles, nés en mariage constant légitime, viendrait à manquer et à s'éteindre entièrement, de sorte qu'il n'y ait plus de mâle ni femelle, descendant de moi légitimement et en lignes légitimes, qui puisse venir à la succession de cette Monarchie, ma volonté est que, dans ce cas, mais non d'une autre manière, la Maison de Savoie arrive à ladite succession, selon qu'il est déclaré comme je l'établis dans la loi dernièrement promulguée, à laquelle je me réfère. Et je veux et j'ordonne que la succession à cette Couronne se règle dorénavant dans la forme exprimée ci-dessus, l'établissant pour loi fondamentale de la succession de ces Royaumes et de tous ceux qui y sont ou qui y seront réunis, nonobstant la loi de la *Partida* et tous autres lois ou statuts, coutumes, rescrits et capitulations ou autres dispositions des Rois mes prédécesseurs, qui seraient contraires, y dérogeant et les annulant en tout ce qui serait contraire à cette loi, et les laissant dans leur force et vigueur pour tout le reste. Telle est ma volonté.

No. III.

D. FELIPE III, EN MADRID, POR PRAGMATICA DE 3 DE JUNIO DE 1619.
(*Novis. Recopilacion*, tom. II., p. 2 et seqq.)

Prohibicion de suceder en estos Reynos la Reyna de Francia doña Ana, y sus descendientes del matrimonio con Luis XIII.

En las capitulaciones matrimoniales del casamiento del Serenísimo Príncipe, nuestro muy caro y muy amado hijo, con la Serenísima Princesa doña Isabel, y el de la Serenísima Infanta doña Ana con Louis XIII, Cristianísimo Rey de Francia, que se otorgaron en esta villa de Madrid á 22 de Agosto del año de 1612, hay dos capítulos del tenor siguiente:

1. Que por quanto por las Magestades Católica y Cristianísima se ha venido y viene en estos casamientos, para con el vínculo doblado de ellos perpetuar y asegurar mas la paz pública de la

Cristiandad, y entre sus Magestades el amor y hermandad que se desea, y en consideracion de las dichas justas causas que muestran y persuaden la conveniencia de estos casamientos, mediante los quales, y con el favor y gracia de Dios se pueden esperar felices sucesos en gran bien y aumiento de la Fe y religion Cristiana, y beneficio comun de los Reynos, subditos y vasallos de ambas Coronas; y por lo que importa al Estado y conservacion público de ellas, que siendo tan grandes, no se junten, y queden prevenidas las ocasiones que podia haber de juntarse; y en razon de la igualdad y conveniencia que se pretende, y otras justas razones, se asienta por pacto convencional, que sus Magestades quieren tenta fuerza y vigor de ley establecida en favor de sus Reynos y de la causa pública de ellos, que la Serenísima Infanta doña Ana, y los hijos que tuviere varones y hembras, y los descendientes dellos y dellas, asi primogenitos como segundo, tercero y quartogénitos, y de allí adelante en qualquier grado que se hallen, para siempre jamas no puedan suceder ni sucedan en los Reynos, Estados y Señoríos de S. M. Católica, ni en ninguno de todos los demas Reynos, Estados y Señoríos, provincias y islas adyacentes, feudos, guardianías ni fronteras que S. M. Católica al presente tiene y posee, y le pertenece ó pueda pertenecer, así dentro de España como fuera della, y adelante S. M. Católica y sus sucesores tuvieren y poseyeren, y les pertenecieren, ni en todos los comprehendidos, inclusos y agregados á ellos, ni en todo lo que en qualquier tiempo se adquiriere y acrecentare á los dichos Reynos, Estados y Señoríos, y recobrare y divolviere por qualquier titulo, derecho ó causa que sea ó ser pueda: y aunque en virtud de él la Serenísima Señora Infanta doña Ana, ó despues en las de qualesquier sus descendientes primogénitos, segundogénitos ó ulteriores, llegue y suceda el caso y casos, en que por derechos, leys y costumbres de los dichos Reynos, Estados y Señorios, y de las disposiciones y titulos por de se sucede y pretendíere suceder en ellos, les habia de pertenecer la sucesion, porque della, y de la esperanza de poder suceder en estos dichos Reynos, Estados y Señorios, desde luego se declara quedar exclusa la dicha Serenísima Infanta, y todos sus hijos y descendientes varones y hembras, aunque digan y puedan decir y pretender, que en sus personas no corran ni se puedan considerar las razones de la causa pública, ni otras en que se pudo fundar esta exclusion: y que á falta (lo que Dios no quiera ni permita) de la sucesion de S. M. Católica, y de los Serenísimos Principes y Infantes, y de los demas hijos que tiene y tuviere, y de todos los legitimos sucesores, que

por toda via, como dicho es, en nigun caso ni tiempo ni acaecimiento han de suceder ni pretender suceder, sin embargo de las dichas leyes, costumbres y ordenanzas y disposiciones en cuya virtud se ha sucedido y sucede en todos los dichos Reynos, Estados y Señorios, y de qualesquier leyes y costumbres de la Corona de Francia, que en perjuicio de los sucesores en ella impiden esta exclusion, así de presente, como en los tiempos y casos de deferirse la sucesion: todas las quales, y cada una dellas sus Magestades han de derogar y abrogar en todo lo que fueren contrarias, ó impidan lo contenido en este capítulo y su cumplimiento y execucion; y se entienda, que por la aprobacion desta capitulacion las derogan y han por derogadas. Y que asimismo sea y se entienda quedar exclusa y exclusos la Señora Infanta y sus descendientes, para no poder suceder en ningun tiempo ni caso en los Estados ni Paises Baxos de Flandes, y Condado de Borgoña y Charoloes con todo lo adyacente y perteniecente á ellos, que por donacion de S. M. Católica se dieron á la Serenísima Infanta Doña Isabel, y han de volver á S. M. Católica y sus sucesores. Pero juntamente se declara expresamente, que si (lo que Dios no quiera ni permita) acaesciere enviudar la Serenísima Infanta sin hijos de este matrimonio, que en tal caso quede libre de la exclusion que queda dicha, y capaz de poder suceder en todo lo que le puede pertenecer, en dos casos: el uno, si quedando viuda de este matrimonio y sin hijos, se viniese á España; el otro, si por conveniencias del bien público y justas consideraciones se casase con voluntad del Rey Católico su padre, y del Príncipe de las Espanas su hermano, en los quales ha de quedar capaz y hábil para poder heredar y suceder.

2. Que la Serenísima Infanta doña Ana, luego que haga cumplido la edad de doce años, y ántes de celebrar y contraer el matrimonio, haya de otorgar escritura, obligándose por sí y sus sucesores al cumplimiento y observancia de lo suso dicho, y de la exclusion suya y de sus descendientes; aprobándolo todo segun y como se contiene en esta capitulacion, con las claúsulas necesarias y juramentos; insertando esta capitulacion, y la escritura de obligacion y aprobacion que su Alteza hubiere otorgado. Hará otra tal juntamente con el Rey Cristianísimo, luego que con S. M. se haya casado; la qual se haya de registrar y pasar por el Parlamento de Paris en la forma y con las fuerzas acostumbradas: y S. M. Católica haya de aprobar la dicha renunciacion y ratificacion en la forma y con las fuerzas acostumbradas: y hechas las dichas renunciaciones, ratificaciones y aprobaciones, ó dexadas de hacer, desde agora (en virtud de esta

capitulacion, y del matrimonio que se siguiere en razon della) se dan por hechas y otorgadas.

Y en execucion y cumplimiento de lo contenido en los dichos capitulos de suso insertos, la dicha Serenísima Infanta doña Ana, Reyna Cristianísima de Francia, otorgó escritura de confirmacion y ratificacion de todo lo en ellos contenido, para que inviolable y sinceramente se guardasen y cumpliesen, como mas largo consta por la dicha escritura, que fué fecha y otorgada en la ciudad de Burgos á 16 de Octubre de 1615.

Y por quanto el Reyno, estando junto en Córtes, en las que se celebraron el año de 1618, deseando que lo contenido en los dichos capítulos se guarde y cumpla como en ellos se contiene, nos ha suplicado hiciésemos y mandásemos promulgar ley, para que lo suso dicho tuviese cumplido efecto: visto por los del nuestro Consejo, fué acordado, que debiamos mandar, como mandamos, que lo contenido en los dichos capítulos y escrituras se guarde y cumpla y execute perpetuamente, segun y como en los dichos capítulos suso incorporados se contiene. (Ley 12 tit. libr. 5, R.)

No. IV.

Articles de mariage de la Reine Marie-Thérèse d'Autriche avec Louis XIV. (Dumont, tom. VIII. part i. p. 15 et seqq.)

1. Avec la grâce et bénédiction de Dieu, et préalablement obtenûë dispense de Sa Saincteté, à raison de proximité et consanguinité qui est entre le Roi Très-Chrétien et la Sérénissime Infante, ils fassent célébrer leurs épousailles et mariage par paroles de présent, selon la forme et solemnité prescrite par les sacrez canons et constitutions de l'Église catholique, apostolique et romaine. Et se feront lesdites espousailles et mariage en la cour de Sa Majesté catholique, où elle sera avec la Sérénissime Infante Dame Marie-Thérèse, et ce en vertu du pouvoir et commission du Roi Très-Chrétien, qui le ratifiera et accomplira en personne, quand la Sérénissime Infante Dame Marie-Thérèse sera amenée en France, Sa Majesté se joignant avec Son Altesse, et recevant les bénédictions de l'Église: Et la conclusion et ratification dudit mariage, soit par pouvoir spécial, ou en présence, se fera quand et dans le temps accordé et concerté entre leurs Majestez.

2. Que Sa Majesté Catholique promet et demeure obligée de donner, et donnera à la Sérénissime Infante Dame Marie-Thérèse, en Dot et en Faveur de Mariage avec le Roi Très-Chrétien de France, et paiera à Sa Majesté Très-Chrétienne, ou à celui qui

aura pouvoir ou commission d'elle, la somme de cinq cent mille Escus d'or sol, ou leur juste valeur, en la Ville de Paris. Et la dite somme sera payée en la manière suivante: le tiers, au temps de la consommation du mariage; l'autre tiers, à la fin de l'année, depuis la dite consommation; et la dernière troisième partie, six mois après: en sorte que l'entier payement de la dite somme de cinq cent mille Escus d'or sol, ou leur juste valeur, sera fait en dix-huit mois de temps, aux termes et portions qui viennent d'être spécifiées.

3. Que Sa Majesté Très-Chrétienne s'oblige d'assurer, et assurera le Dot de la Sérénissime Infante Dame Marie-Thérèse, sur rentes bonnes et bien assurées, et sur fonds et assignations valables.

4. Que moyennant le paiement effectif fait à Sa Majesté Très-Chrétienne des dits cinq cent mille Escus d'or sol, ou leur juste valeur, aux termes qu'il a été ci-devant dit, la dite Sérénissime Infante se tiendra pour contente, et se contentera du dit Dot, sans que par ci-après elle puisse alléguer aucun sien autre droit, ni intenter aucune autre action ou demande, prétendant qu'il lui appartienne, ou puisse appartenir autres plus grands Biens, Droits, raisons, actions, pour cause des héritages et plus grande succession de leurs personnes en quelque autre manière, ou pour quelque cause et titre que ce soit, soit qu'elle le sceût ou qu'elle l'ignorât; attendu que de quelque qualité et condition que lesdites actions et choses ci-dessus soient, elle en doit demeurer excluse, et avant l'effectuation de ses Espousailles, elle en fera la Renonciation en bonne deûe forme, et avec toutes les assurances, formes et solemnitez qui sont requises et nécessaires: laquelle dite Renonciation elle fera avant que d'être mariée, par parole de présent; qu'elle, aussi-tôt après la célébration du Mariage, approuvera et ratifiera conjointement avec le Roi Très-Chrétien, avec les mêmes formes et solemnitez qu'elle aura fait à la susdite première Renonciation, voire avec les clauses qu'ils verront estre les plus convenables et nécessaires: A l'effet et accomplissement de laquelle renonciation, Sa Majesté Très-Chrétienne et Son Altesse demeureront et demeurent, dès à présent, comme pour lors, obligées; et au cas qu'elles ne fassent la dite Renonciation et Ratification, en vertu du présent Contract, par Capitulation, Iceux susdits Traitez, Renonciation et Ratification, seront tenus et censez dès à présent, comme pour lors, pour bien deüement faits, passéz, et octroyéz. Ce qui se fera en la forme la plus authentique, et efficace que faire se pourra, pour être bonnes et valides, ensemble avec toutes les Clauses dérogatoires de quelconque Loi, Jurisdiction,

Coûtume, Droits et Constitutions, à ce contraires, ou qui empêchassent en tout, ou en partie, lesdites Renonciations et Ratifications; auxquelles, à l'effet et validité que dessus, leurs Majestés Très-Chrétienne et Catholique dérogeront, et dès à présent elles y dérogent entièrement: Et par l'Approbation et Ratification de ce premier Contract et Capitulation, dès à présent comme dès lors, elles entendront et entendent avoir dérogé à toutes exceptions ci-dessus.

5. Que d'autant que leurs Majestéz Très-Chrétienne et Catholique sont venues et viennent à faire ce Mariage, afin de tant perpétuer et assurer par ce nœud et lien la Paix publique de la Chrétienté, et entre leurs Majestez, l'amour et la fraternité que chacun espère entre elles, et en contemplation aussi des justes et légitimes causes, qui montrent et persuadent l'égalité et convenance dudit Mariage, par le moyen duquel et moyennant la faveur et la grâce de Dieu, chacun en peut espérer de très heureux succez au grand bien et augmentation de la Foi et Religion Chrétienne, au bien et bénéfice commun des Royaumes, Sujets et Vassaux des deux Couronnes; comme aussi pour ce qui touche et importe au bien de la chose publique, et conservation des dites couronnes; lesquelles étant si grandes et puissantes, ne puissent être réunies en une seule, et que dès à présent, on prenne les occasions d'une pareille conjonction: Doncques, attendu la qualité des susdites et autres justes raisons, et notamment celle de l'égalité qui se doit conserver, Leurs Majestez accordent et arrêtent, par Contract et Pacte conventionnel entre elles, qui sortira, et aura lieu, force et vigueur de Loi ferme et stable à tout jamais, en faveur de leurs Royaumes, et de toute la chose publique d'iceux; que la Sérénissime Infante d'Espagne, Dame MARIE-THERESE, et les enfans procréez d'elle, soit mâles ou femelles, et leurs Descendans, premiers ou seconds, trois ou quatre, néz ci-après, en quelque degré qu'ils se puissent trouver, voire à tout jamais, ne puissent succéder, ni succèdent ès Royaumes, Estats, Seigneuries, et Dominations qui appartiennent et appartiendront à Sa Majesté Catholique et qui sont compris au dessous des Titres et Qualitéz mentionnés en cette présente Capitulation, ni en aucun de ses autres Royaumes, Estats, Seigneuries, Provinces, Isles adjacentes, Fiefs, Capitaineries, ni ès Frontières que Sa Majesté Catholique possède dès à présent, ou qui lui appartiennent ou pourront appartenir, tant dedans que dehors le Royaume d'Espagne, et qu'à l'avenir, sa dite Majesté Catholique, ou ses Successeurs auront, posséderont, et leur appartiendront, ni en tous ceux qui

sont compris en iceux, ou dépendent d'iceux ; ni même en tous ceux qui par ci-après, en quelque temps que ce soit, elle pourrait acquérir, accroître ou ajouter aux susdits siens Royaumes, Estats et Dominations, ou qu'elle pourrait retirer, ou qui la pourraient échoir par dévolution ou par quelques autres titres, Droits, ou Raisons, que ce puisse être, encore que ce fût durant la vie de la dite Sérénissime Infante Dame Marie-Thérèse, ou après sa mort, en celle de qui que ce soit de ses descendants, premiers, seconds, troisièmes nés ou ultérieurs, que la cas ou les cas, par lesquels, ou de Droit, ou par les Loix et Coutumes desdits Royaumes, Estats et Dominations, soit par dispositions de titres, par lesquels ils puissent succéder, ou prétendre pouvoir succéder, ès dits Royaumes, Estats ou Dominations, leur dût appartenir la succession, en tous lesquels susdits cas, dès à présent, ladite Dame Marie-Thérèse, Infante, dit et déclare être et demeure bien et deûement excluse, ensemble tous ses Enfans, ou descendans, Mâles ou Femelles, encore qu'ils se voulussent ou pussent dire et prétendre, qu'en leurs personnes ne courent, ni ne se peuvent et doivent considérer les dites raisons de la chose publique, ni autres ès quelles la dite exclusion se pourrait fonder ; ou qu'ils voulussent alléguer (ce qu'à Dieu ne plaise) que la Succession du Roi Catholique, ou de ses Sérénissimes Princes ou Infantes, et d'abondant des mâles, qu'il a et pourra avoir les légitimes Successeurs, eût manqué et défailli ; parce que, comme il a été dit, en aucun cas, ni en aucun temps, ni en quelle autre manière qui peut advenir, ni elle, ni eux, ni ses Hoirs, et ses descendans, n'ont à succéder, nonobstant toutes Loix, Coutumes, Ordonnances et Dispositions en vertu desquelles, on a succédé, en tous les dits Royaumes, Estats et Seigneuries ; et nonobstant aussi toutes les Loix et Coutumes de la Couronne de France, qui, au préjudice des successeurs en icelles, s'opposent à cette susdite Exclusion, aussi bien à présent, comme au temps à venir, et aux cas qui auraient longtemps différé les dites Successions, à toutes lesquelles considérations, ensemble, et à chacune en particulier d'icelles, leurs dites Majestéz dérogent, en ce qu'elles contrarient ou empêchent le contenu en ce Contract, ou l'accomplissement et exécution d'icelui : et que pour l'approbation et ratification de cette présente Capitulation, elles y dérogent et les tiennent pour dérogées. Veulent et entendent que la Sérénissime Infante, et les Descendans d'icelle demeurent à l'avenir et pour jamais exclus de pouvoir succéder en aucun temps, ni en aucun cas, ès Estats du Païs de Flandre, Comté de Bourgogne, et de Charo-

lois, leurs appartenances et dépendances. Pareillement aussi, ils déclarent très-expressément, qu'en cas que la Séréniss. Infante demeure veuve (ce qu'à Dieu ne plaise), sans enfans de ce mariage, qu'elle demeurera libre et franche de la dite exclusion, et partant déclarée personne capable de ses Droits, et pouvoir succéder en tout ce qui lui pourra appartenir, ou eschoir en deux cas seulement: l'un, si elle demeurant veuve de ce Mariage, sans Enfans, venait en Espagne; l'autre, si par raison d'état, pour le bien public, et pour justes considérations, elle se remariât, par la volonté du Roi Catholique son Père, ou du Prince son frère; Esquels deux cas, elle demeurera capable et habile à pouvoir succéder et hériter.

6. Que la Seréniss. Infante Dame Marie-Thérèse, avant que de célébrer le Mariage, par paroles de présent, donnera, promettra et octroyera son écrit, par lequel elle s'obligera, tant pour elle que pour ses Successeurs et héritiers, à l'accomplissement et observation de tout ce que dessus, et de son exclusion et de celle de ses Descendans; approuvera le tout selon comme il est contenu en cette présente Capitulation, avec les Clauses et Juremens nécessaires, et requis. Et en insérant la susdite obligation et ratification, que Son Altesse aura donnée et faite à la présente Capitulation, et elle en fera une autre pareille semblable conjointement avec le Roi Très-Chrétien, si-tôt qu'elle sera enregistrée au Parlement de Paris, selon la forme accoutumée, avec les autres clauses nécessaires. Comme aussi de la part de Sa Majesté Catholique, elle fera approuver et ratifier la Renonciation et Ratification, en la forme et force accoutumée, avec les autres clauses nécessaires; la fera aussi enregistrer en son Conseil d'Etat. Et soit que les dites Renonciations, Ratifications et Approbations soient faites, on non faites, dès à présent, en vertu de cette Capitulation et du Mariage qui s'ensuivra, et en contemplation de toutes les susdites choses, elles seront tenues et censées, pour bien et deüement faites et octroyées, et pour passées et enregistrées dans le Parlement de Paris, par la publication de la paix dans le Royaume de France.

7. Que Sa Majesté Très-Chrétienne donnera à la Séréniss. Infante Dame Marie-Thérèse, pour ses bagues et joyaux, la valeur de 50,000 escus d'or sol, etc.

8. Que Sa Majesté Très-Chrétienne, suivant l'ancienne et louable coutume de la maison de France, assignera et constituera à la Séréniss. Infante Dame Marie-Thérèse, pour son douaire, 20,000 escus d'or sol, etc.;

9. Que Sa Majesté Très-Chrétienne donnera et assignera à la

Séréniss. Infante Dame Marie-Thérèse, pour la dépense de la chambre et entretenement de son Etat et de sa maison, une somme convenable, telle qu'appartient à sa femme et fille de si grands et si puissants Rois, etc.;

10. Que le Roi Très-Chrétien et la Séréniss. Infante, Dame Marie-Thérèse, s'espouseront et marieront par procureur qu'envoyera le Roi Très-Chrétien à la Séréniss. Infante, par parole de présent. Ce qu'estant fait, Sa Majesté Catholique la fera mener à ses frais et despens jusques à la frontière du royaume de France, etc.;

11. Qu'en cas que le marriage se dissolve entre Sa Majesté Très-Chrétienne et la Séréniss. Infante Dame Marie-Thérèse, et que son Altesse survive à Sa Majesté Très-Chrétienne, en ce cas, elle s'en pourra retourner librement et sans autre empêchement quelconque, au royaume d'Espagne, etc.;

12. Ce traité et contract de Mariage a été fait avec dessein de supplier notre Saint Père le Pape, comme, dès à présent, Leurs Majestés l'en supplient qu'il ait agréable de l'approuver et lui donner sa Bénédiction apostolique, etc., etc., etc.

No. V.

Acte de renonciation de Marie-Thérèse d'Autriche (Dumont, *loc. cit.*, page 21).

Partant de mon propre mouvement, libre, spontané et agréable volonté, et ayant certaine science et connoissance de l'acte que je fais, et de ce qu'il importe et peut importer mon consentement, j'approuve, confirme et ratifie en la voye et forme que mieux je puis et dois, le dit accord selon et de la façon qu'il est contenu plus particulièrement dans ledit article 8, et, en cas qu'il sembleroit nécessaire et convenable, je donne mon pouvoir absolu et suffisant au Roi mon seigneur et au Roi Très-Chrétien, à ce qu'il le puisse arrêter et accorder de nouveau. Quoique en vertu et accomplissement dudit article, je me déclare et tiens pour excluse, éloignée, et les enfans et descendans de ce mariage exclus et inhabilitez absolument et sans limitation, différence ou distinction des personnes, degrez, sexe et temps de l'action et droit de succéder aux Royaumes, Estats, Provinces, terres et seigneuries de cette couronne d'Espagne exprimez, et déclarez par icelui, et que je veux et consens pour moi et lesdits miens descendants que dès maintenant, comme pour lors, l'on les tienne pour cédez et transférez à celui qui se trouvera le plus proche en degré (à cause que moi et eux

nous sommes exclus, inhabiles et incapables) et immédiat au Roi, par la mort duquel il vaquera et se devra régler et déférer la succession desdits Royaumes, et afin qu'il les tienne et possède comme légitime vrai successeur, de même façon que si moi et mes descendants ne fussions pas néz, ni étions au monde, parce que nous devrions être tenus et réputez pour tels, afin qu'en ma personne et en la leur, l'on ne puisse considérer ni faire fondement de représentation active ou passive principe ou continuation de lignée effective ou contentive de substance, de sang ou de qualité, ni tirer la descendance et computation des degrez, de celle du roi mon seigneur, ni de celle des glorieux rois ses prédécesseurs, ni pour aucun autre effet, afin d'entrer en la succession ou préoccuper le degré de proximité, et d'en exclure la personne qui se trouvera (comme dit est) proche en degré; et je promets et m'oblige, en foi et parole royale, qu'en tout ce qui dépendra de moi et de mes dits enfans et descendans, l'on procurera tout et en tout temps que l'observation et accomplissement du dit article, et de ce mien acte, que je fais pour son approbation et confirmation, soit inviolable, sans permettre ni consentir que l'on aille, ou agisse, au contraire, directement ou indirectement, en tout ou en partie; et je désiste et cède tous et quelconques remédes, sceux ou ignorez, ordinaires ou extraordinaires, et qui nous pourraient appartenir par droit commun ou privilège spécial, à moi ou à mes dit enfans et descendans, pour réclamer, dire et alléguer contre ce que dessus, et je renonce à tous et spécialement à celui de la restitution *in integrum*, fondée sur l'ignorance ou inadvertance de ma minorité, ou sur la lésion évidente, énorme et très-énorme que l'on pourroit considérer être intervenue dans la désistance et renonciation du droit de pouvoir succéder en aucun temps à tant et à de si grands Royaumes, Estats et Seigneuries, et je veux que nul des dits remèdes ni aucuns autres, de quelconque nom, caractère, importance et qualité qu'ils soient, nous servent et puissent servir judiciellement ou extra-judiciellement, et que si nous les intentions ou tâchions de les déduire en voye de justice et contestation l'on nous desnie et ferme toute sorte d'audience; et si de fait ou si quelconque couleur mal prétendue, défaut de la justice (parce que nous n'en avons aucune pour succéder aux dits Royaumes), nous les voulussions occuper par force d'armes, faisant ou mouvant guerre offensive, que dès maintenant, comme pour lors, l'on la tienne juge et déclare pour illicite, injuste et mal attentée, et pour violence, invasion et usurpation tirannique et faite contre raison et conscience; et, qu'au

contraire on juge et qualifie pour juste, licite et permise celle qui se viendroit à faire ou mouvoir par celui qui y devroit succéder à mon exclusion et de mes dits enfans et descendans, lequel les sujets et habitans devront recevoir et obéir, lui faire et prêter serment et l'hommage de fidélité et le servir comme à leur roi et seigneur légitime; et j'affirme et certifie que pour octroyer cet acte je n'ai été induite, attirée ni persuadée par le respect et vénération que je dois et ai pour le Roi mon seigneur, comme à prince si puissant et père qui m'aime tant et que j'aime, et qui me tient et m'a tenue sous sa puissance paternelle, parce que véritablement en tout ce qui se passe et s'est passé au regard de la conclusion et effet de ce mariage touchant le dit accord et article de mon exclusion et de celle de mes descendans, j'ai eu toute la liberté que j'ai pu souhaiter pour dire et déclarer ma volonté, sans que de sa part, ou d'aucune autre personne, l'on m'ait fait aucune peur ni menace pour m'y induire et attirer à faire aucune chose contre elle, et que pour plus grande validité et assurance de ce qui est dit, et promis de ma part, je jure solennellement par les évangiles contenus dans ce missel (sur lequel je mets ma main droite), que je le garderai, maintiendrai et accomplirai en tout et partout, et que je ne demanderai point de dispense de ce serment à notre très-saint père, ni au saint-siége apostolique, ni à son légat ou à aucune dignité qui auroit faculté de me la pouvoir octroyer, et que si l'on me l'octroyoit à mon instance ou de quelconque université ou personne particulière ou *motu proprio* encore que ce seroit seulement afin de pouvoir entrer en jugement, sans toucher à la substance des dits remèdes, et de la force de cet acte et du traité que j'approuve par icelui, je ne me prévaudrai point ni m'en servirai; au contraire, en cas que l'on me l'octroyeroit, je fais un autre semblable serment afin qu'il y en ait et demeure toujours un sur toutes les dispenses qui me seront octroyées, et sous le même je dis et promets que je ne fais ni ferai aucune protestation ou réclamation en public ou en secret qui puisse empêcher ou diminuer la force du contenu en cet acte, et que si je la fais (encore qu'elle soit sous serment), qu'elle ne sera d'aucune valeur et ne puisse avoir aucune force ni effet, et je supplie Sa Sainteté, que puisque ce mariage et son traité a été conclu et accordé avec sa sainte et apostolique approbation, et se doit effectuer et célébrer avec sa bénédiction, elle soit servie d'accroître la force du lien et religion de ce serment par l'autorité de sa confirmation apostolique, et je promets et m'oblige qu'en conformité et accomplissement de l'article 6 ci-dessus mentionné, aussitôt que

j'arriverai au lieu où le Roi Très-Chrétien me doit recevoir, je ferai et ferai faire, avec son intervention et autorité et conjointement avec S. M. Très-Chrétienne et avec toutes les clauses, serments et conditions nécessaires et convenables, un autre semblable acte de confirmation et ratification de celui qui a été fait et dépêché dans cette cité de Fontarabie, où se trouve à présent le Roi Catholique mon seigneur, avec sa cour et palais, le second jour de juin de cette année 1660, en présence du roi notre maître.

No. VI.

Tractatus Fœderis, inter Sacram Cæsaream Majestatem Leopoldum I. Regiam Majestatem Britanniæ, Wilhelmum III, nec non Præpotentes Ordines Generales Fœderatarum Belgii Provinciarum. Dumont, *loc. cit.*, pag. 90.)

1°. Sit maneatque inter Sacram Cæsaream Majestatem, Sacram Regiam Majestatem Magnæ Britanniæ, et Dominos Ordines Generales Uniti Belgii constans, perpetua et inviolabilis amicitia et correspondentia, teneaturque alter alterius commoda promovere, damna vero et incommoda pro posse avertere.

2°. Sacra sua Cæsarea Majestas, Sacra Regia Majestas Magnæ Britanniæ et Domini Ordines Generales, cum nulla res ipsis magis cordi sit, quam pax et tranquilitas generalis totius Europæ, judicaverunt ad eam stabiliendam, nihil efficacius futurum, quam procurando Cæsaræ suæ Majestati ratione prætensionis suæ in Successionem Hispanicam satisfactionem æquam et rationi convenientem, et ut Rex Magnæ Britanniæ et Domini Ordines Generales securitatem particularem et sufficientem pro Regnis, Provinciis Ditionibusque suis, et pro Navigatione, et Commerciis Subditorum suorum adipiscantur.

3°. Propterea Fœderati ante omnia operam dabunt quantam possunt maximam ad obtinendam via amicabili, et per Transactionem solidam et firmam Cæsareæ suæ Majestati satisfactionem æquam et rationi convenientem in causa memoratæ Successionis, ac securitatem modo indigitatam Regiæ suæ Majestati Magnæ Britanniæ, et Dominis Ordinibus Generalibus Uniti Belgii, impendentque Fœderati in hunc finem omni studio et absque ulla intermissione spacium duorum mensium a die quo Ratificationum Tabulæ commutabuntur, numerandum.

4°. Quod si præter spem et vota, intra tempus præfiturum res eo, quo dictum est modo transigi nequeat, Fœderati sibi invicem

spondent et promittunt, se alter alterum omnibus viribus adjuturos, idque juxta specificationem peculiari in conventione determinandam, ut ita aquirant satisfactionem et securitatem ante memoratas.

5°. Fœderati ad procurandam satisfactionem et securitatem antedictas, omnes nervos intendent, ut alia recuperent Provincias hispano-belgicas, ut sint obex et repagulum vulgo *Barrière*, Galliam a Belgio Fœderato removens et separans pro securitate Dominorum Ordinum Generalium, quemadmodum ab omni tempore inservierunt, donec Rex Christianissimus, nuper eas milite suo occuparit, ut et Ducatum Mediolanensem cum dependentiis ejus, tanquam feudum imperii atque securitati Provinciarum Hæreditariarum Cæsareæ Majestati inserviens. Præterea Regna Neapolis et Siciliæ, et Terras atque Insulas circa ora Hetruriæ in Mari Mediterraneo, quæ sunt Ditionis Hispanicæ et ejusdem usui esse possunt, ut et prodesse Navigationi et Commerciis Subditorum Regis Magnæ Britanniæ et Belgii Uniti.

6°. Licitum sit Regiæ suæ Majestati Magnæ Britanniæ, et Dominis Ordinibus Generalibus communi Consilio pro utilitate et commodo Navigationis et Commercii subditorum suorum, quas poterunt in Indiis Hispanicæ Ditionis Terras et Urbes armis occupare, quidquid autem occupaverint, ipsorum manebit.

7°. Necessitate exigente, ut Fœderati ad obtinendam antedictam suæ Cæsareæ Majestatis satisfactionem et Regis Magnæ Britanniæ, ac D. Dominorum Ordinum Generalium securitatem bellum subire adigantur, fideliter inter se Consilia communicabunt, de operationibus bellicis, et de omnibus rebus ad causam hanc communem spectantibus.

8°. Neutri Partium fas sit Bello semel suscepto de Pace cum hoste tractare nisi conjunctim et communicatis Consiliis cum altera parte, nec Pax ineatur, nisi adepta priùs pro Cæsarea sua Majestate satisfactione æqua et rationi conveniente et pro Regia sua Majestate Magnæ Britanniæ, et Dominis Ordinibus Generalibus securitate peculiari Regnorum, Provinciarum, Ditionum, Navigationis et Commerciorum suorum, et nisi justis cautelis antea provisum sit, ne Regna Galliæ et Hispaniæ unquam sub idem imperium veniant, et uniantur, nec unquam unus et idem utriusque Regni Rex fiat, et speciatim ne Galli unquam in possessionem Indiarum Juris Hispanici veniant neque ipsis ibidem Navigatio Mercaturæ exercendæ causa, sub quocunque prætextu directe vel indirecte permittatur, et denique nisi pacta pro Subditis Regis

Magnæ Britanniæ, et Fœderati Belgii facultate plenâ utendi et fruendi omnibus iis privilegiis, Juribusque, immunitatibus et libertatibus Commerciorum Terra Marique Hispaniâ, Mari Mediterraneo, et in omnibus Terris et locis, quæ rex Hispaniarum postremo defunctus tempore mortis, tam in Europa quam alibi possedit, quibus tunc utebantur et fruebantur; vel quibus amborum vel singulorum Subditi jure ante obitum dicti Regis Hispaniarum quæsito, per Tractatus, per Pacta conventa, per Consuetudinem, vel per alium quemque modum uti et frui poterant.

9°. Tempore quo dicta transactio; vel Pax fiet, fœderati inter se convenient, de omnibus iis, quæ ad stabiliendam Navigationem et Commercia Subditorum Regis Magnæ Britanniæ et Dominorum Ordinum Generalium in Terris et Ditionibus aquirendis et a postremo defuncto Hispaniarum Rege possessis necessaria erunt, quemadmodum etiam de modo quo Domini Ordines Generales per obicem antedictum, vulgo *Barrière* secuti reddentur.

10°. Et quoniam controversiæ quædam Religionis ergo exoriri possent, in locis a Fœderatis, uti sperant, armis occupandis de exercitio ejus interse, etiam eodem quo supradictum est, tempore convenient.

11°. Fœderati se invicem omnibus viribus juvare et opem ferre contra Agressorem teneantur, si rex Christianissimus vel quisquam alius aliquam Fœderatorum ex causa hujus Fœderis aggredi sustineat.

12°. Quod si vel nunc super sæpe indigitata satisfactione, et securitate transigi queat, vel post susceptum necessario Bellum Pax iterûm coalescat, post talem vel Transactionem vel Pacem conclusam sit et maneat semper inter partes contrahentes Fœdus defensivum pro Guarantia ejusdem, vel Transactionis vel Pacis.

13°. Ad hujus Fœderis societatem admittantur cuncti Reges, Principes et Status qui volent quibusque Pax generalis cordi est. Quoniam autem sacri Romani Imperii peculiariter interest Pacem publicam servari, et hic inter alia agatur de recuperandis Imperii Feudis, ad hujus Fœderis societatem dictum imperium speciatim invitabitur: prætereà Fœderatis conjunctim vel singulis seorsim licitum sit accessionem ad hoc Fœdus requirere, eorum quos requirere ipsis visum fuerit.

14°. Ratihabebitur hoc Fœdus ab omnibus Fœderatis intra spatium sex septimanarum, vel citius si fieri poterit, in quorum fidem nos supramemorati Plenipotentiarii præsens Fœdus subscriptionibus e Sigilis nostris munivimus. Hagæ Comitum die septimo Septembris anni millesimi septingentesimi primi.

No. VII.

Articles préliminaires de la part de la France, pour parvenir à une paix générale. (Actes et Mém. touchant la paix d'Utrecht, tom. i. page 192.

Le Roi, voulant contribuer de tout son pouvoir au rétablissement de la paix générale, Sa Majesté déclare:

I.

Qu'elle reconnaîtra la Reine de la Grande-Bretagne en cette qualité, comme aussi la succession de cette couronne selon l'établissement présent.

II.

Qu'elle consentira volontiers et de bonne foi qu'on prenne toutes les mesures justes et raisonnables, pour empêcher que les couronnes de France et d'Espagne ne soient jamais réunies en la personne d'un même prince; Sa Majesté étant persuadée qu'une puissance si excessive serait contraire au bien et au repos de l'Europe.

III.

L'intention du Roi est que tous les princes et Etats engagés dans cette guerre, sans aucune exception, trouvent une satisfaction raisonnable dans le traité de paix qui se fera, et que le commerce soit rétabli et maintenu à l'avenir à l'avantage de la Grande-Bretagne, de la Hollande et des autres nations qui ont accoutumé de trafiquer.

IV.

Comme le Roi veut aussi maintenir exactement l'observation de la paix, lorsqu'elle aura été conclue; et l'objet que le Roi se propose étant d'assurer les frontières de son royaume, sans inquiéter en quelque manière que ce soit les Etats de ses voisins, promet de consentir par le traité qui sera conclu, que les Hollandais soient mis en possession des places fortes qui y seront spécifiées, dans les Pays-Bas, qui serviront à l'avenir de barrière pour assurer le repos de la Hollande contre toutes sortes d'entreprises du côté de la France.

V.

Le Roi consent aussi qu'on forme une barrière sûre et convenable pour l'empire et pour la maison d'Autriche.

VI.

Quoique Dunkerque ait coûté au Roi de très-grosses sommes, tant pour l'acquérir que pour le fortifier, et qu'il soit nécessaire de faire encore une dépense considérable pour en raser les ouvrages,

Sa Majesté veut bien cependant s'engager à les faire démolir immédiatement après la conclusion de la paix, à condition qu'on lui donnera un équivalent pour les fortifications, à sa satisfaction; et comme l'Angleterre ne peut pas fournir cet équivalent, la discussion en sera remise aux conférences qui se tiendront pour la négociation de la paix.

VII.

Lorsque les conférences pour les négociations de la paix seront formées, on y discutera de bonne foi et à l'amiable toutes les prétentions des princes et Etats engagés dans cette guerre, et on ne négligera rien pour les régler et terminer à la satisfaction des parties intéressées.

" En vertu du plein pouvoir du Roi, nous soussignés, chevaliers de l'ordre de Saint-Michel, députés au conseil de commerce, avons conclu au nom de Sa Majesté les présents articles préliminaires, en foi de quoi nous avons signé.

(L. S.) MÉNAGER.

Fait à Londres, le 27 septembre. V. st. ou 8. d'octob. n. st. 1711.

No. VIII.

Explication spécifiques des offres de la France pour la paix générale à la satisfaction de tous les intéressés dans la guerre présente. (Actes et mémoires, etc. loc. cit.)

Le Roi reconnaîtra, en signant la paix, la Reine de la Grande-Bretagne en cette qualité, aussi bien que la succession à cette couronne suivant l'établissement présent, et de la manière qu'il plaira à S. M. Britannique.

Sa Majesté fera démolir toutes les fortifications de Dunkerque immédiatement après la paix, moyennant un équivalent à sa satisfaction.

L'île de Saint-Christophe, la baie et le détroit de Hudson seront cédés entièrement à la Grande-Bretagne; respectivement l'Acadie avec le Fort et le Port royal seront restitués en entier à sa Majesté.

Quant à l'île de Terre-Neuve, le Roi offre de la céder encore à la Grande-Bretagne, en se réservant seulement le fort de Plaisance et le droit de pêcher et de sécher la morue comme avant la guerre.

On conviendra de faire un traité de commerce avant ou après la paix, au choix de l'Angleterre, dont on rendra les conditions égales entre les deux nations le plus qu'il sera possible.

Le Roi consentira en signant la paix, que les Pays-Bas espagnols cédés à l'électeur de Bavière par le Roi d'Espagne servent de barrière aux Provinces-Unies, et pour l'augmenter il y joindra Furnes et Furnerambacht, la Knvcke, Ypres et sa châtellenie, Menin avec sa verge; en échange, Sa Majesté demande, pour former la barrière de France, Aire, Saint-Venant, Béthune, Douai, Bouschain et leurs dépendances.

Si les Etats-Généraux veulent tenir des garnisons dans les places fortes de la barrière ainsi formée des Etats cédés à S. A. E. et de ceux que la France y joint du sien, S. M. consent qu'ils y mettent leurs troupes en si grand nombre qu'il leur plaira, et de plus, qu'elles soient entretenues aux dépends du pays.

Au moyen de cette cession et de ce consentement, le Roi, de son côté, demande, pour l'équivalent de la démolition de Dunkerque, les villes et citadelles de Lille et de Tournai avec leurs châtellenies et dépendances.

La barrière ainsi réglée entre la France et les Etats-Généraux, le Roi accordera, pour augmenter le commerce de leurs sujets, ce qui est stipulé par le traité de Ryswick et le tarif avantageux de 1664, à l'exception seulement de six genres de marchandises dont on conviendra, et qui demeureront chargées des mêmes droits qui se payent aujourd'hui, ensemble l'exemption de 44 sols par tonneau sur les vaisseaux hollandais venant de France, des Provinces-Unies et des pays étrangers.

A l'égard du commerce d'Espagne et des Indes espagnoles, le Roi s'engagera, non-seulement aux Etats-Généraux, mais encore à la Grande-Bretagne et à toutes les autres puissances, en vertu du pouvoir qu'il en a, que ces commerces se feront précisément et en tout, de la même manière qu'ils se faisaient sous le règne et jusqu'à la mort de Charles II, et promettra que les François s'assujettiront, comme toutes les autres nations, aux anciennes lois et réglements faits par les rois prédécesseurs de Sa Majesté catholique, au sujet du commerce et de la navigation des Indes espagnoles.

Sa Majesté, de plus, consent que toutes les puissances de l'Europe entrent en garantie de cette promesse. Sa Majesté promet que le roi son petit-fils renoncera, pour le bien de la paix, à toute prétention sur les royaumes de Naples et de Sardaigne, aussi bien que sur le duché de Milan, dont elle consentira audit nom que la partie cédée au duc de Savoie demeure à S. A. R.; bien entendu que, moyennant cette cession, la maison d'Autriche se désistera pareille-

ment de toutes prétentions sur les autres parties de la monarchie d'Espagne, d'où elle retirera ses troupes immédiatement après la paix.

Les frontières de part et d'autre, sur le Rhin, seront remises au même état qu'elles étaient avant la présente guerre.

Moyennant toutes ces conditions ci-dessus, le Roi demande que les électeurs de Cologne et de Bavière soient rétablis dans la pleine et entière possession de leurs Etats, dignités, prérogatives, biens, meubles et immeubles dont ils jouissaient avant la présente guerre; et réciproquement Sa Majesté reconnaîtra dans l'Allemagne et dans la Prusse tous les titres que jusqu'à présent elle n'a pas reconnus.

Le Roi restituera au duc de Savoie ce qu'il lui a pris pendant cette guerre, comme pareillement S. A. R. lui rendra ce qu'elle a pris sur la France, de sorte que les limites de part et d'autre seront les mêmes qu'elles étaient avant la déclaration de guerre.

Les choses, pour le Portugal, seront rétablies et demeureront sur le même pied, en Europe, qu'elles étaient avant la présente guerre, tant à l'égard de la France que de l'Espagne; et quant aux domaines qui sont dans l'Amérique, s'il y a quelque différent à régler, on tâchera d'en convenir à l'amiable.

Le Roi consentira volontairement et de bonne foi à prendre, de concert avec les alliés, toutes les mesures les plus justes pour empêcher que les couronnes de France et d'Espagne ne soient jamais réunies sur une même tête; c'est-à-dire, qu'un même prince puisse être tout ensemble roi de l'une et de l'autre.

Tous les précédents traités, savoir celui de Munster et les suivants, seront rappelés et confirmés pour demeurer dans leur force et vigueur, à l'exception seulement des articles auxquels le traité de paix à faire présentement aura dérogé ou changé quelque chose.

Etait signé:

HUXELLES.

No. IX.

Renunciation of Philip, duke of Anjou and king of Spain, to the crown of France.

EL REY.

Por quanto en cinquo de Noviembre de este año de mil setecientos y doze, ante D. Manuel de Vadillo y Velasco mi Secretario de Estado y Notario mayor de Los Reynos de Castilla y Leon y

testigos, otorgue, jure y firme el instrumento publico del tenor siguiente qua à la lettra es como se sigue.

D. Phelipe por la gracia de Dios, Rey de Castilla, de Leon, de Aragon, de las dos Sizilias, de Hierusalem, de Navarra, de Granada, de Toledo, de Valencia, de Galicia, de Malorca, de Sevilla, de Zerdeña, de Cordoüa, de Corzega, de Murcia, de Jaen, de los Algarues, de Algecira, de Gibraltar, de las Islas de Canaria, de las Indias Orientales y Occidentales, Islas y Tierra firme del Mar Oceano, Achiduque de Austria, Duque de Borgoña, de Bravante y Milan, Conde de Abspurg, de Flandes, Tirol y Barcelona, Señor de Viscaya y de Molina, etc. Por la relation y Noticia de esté instrumento y escriptura de renunciation y dessistimiento, y paraque quede en perpetua memoria, Hago notorio y manifieslo a los Reyes, Principes Potendados, Repùblicas, Comunidades y personas particulares que son y fueren en los siglos venideros, que siendo uno de los principales supuestos de los Tratados de Pazes pendientes entra la Corona de España y la de Francia, con la de Inglaterra, para zimentar la firme y permanente, y proceder a la general sobre la maxima de asegurar con perpetuidad el universal bien, y quietud de la Europa en un equilibrio de Potencias, desuerte que unidas muchas in una, no declinale la valanza de la deseada igualdad, en ventaja de una, apeligro y recelo de las demas: se propuso y insto por la Inglaterra, y se combino por mi parte, y la del Rey mi abuelo, que para evitar in qualquier tiempo la union de esta Monarchia, y la de Francia y la possibilidad de que in mingun casso subcediese se huuiesen reciprocas renuncias por mi y toda mi descendencia a la subcesion posible de la Monarchia de Francia y por la de aquellos Princi es y todas sus lineas existentes y futuras a la de esta Monarchia, formando una relacion decorosa de abdication de todos los derechos que pudieren azerarse para subcederse mutuamente las dos casas Reales de esta y de aquella Monarchia separando con los medios legales de mi renuncia, mi rama del tronco real de Francia, y todas las ramas de la de Francia de la troncal derivacion de la Sangre Real Española: previniendose asimismo en consequencia, de la maxima fondamental y perpetua del equilibrio de las Potencias de Europa, el que assi como este persuade y justifica evitar en todos casos excogitables la union de la Monarchia de España con la de Francia se precauciona se el incombeniente de que en falta de mi descendencia, se diese el casso de que esta Monarchia pudiese recaer en la casa de Austria cuyos dominios y adherencias aun sin la union del Imperio la haria for-

midable : motivo que hizo plausible en otros tiempos la separacion de los Estados hereditarios de la Casa de Austria del Cuerpo de la Monarchia Española, combiniendose y ajustandose a este fin por la Inglaterra con migo, y con el Rey mi abuelo, que en falta mia y de mi descendencia entre la subcesion de esta Monarchia el Duque de Savoya, y sus hijos y descendientes masculinos, nacidos en constante legitimo matrimonio, y en defecto de sus lineas masculinas, el Principe Amedeo de Carignan y sus de hijos y descendientes masculinos nacidos en constante legitimo matrimonio y en defecto de sus lineas el Principe Thomas Hermano del Principe de Caniñan sus hijos y descendientes masculinos nacidos en constante legitimo matrimonio que por descendientes de la infante D. Cathalina Hija de el S. Phelipe Segundo y Illamamientos expressos tienen derecho claro y conocido supuesta la amistad y perpetua alianza, que se deve solecitar y conseguir Del Duque de Savoya, y su descendencia con esta corona, deviendose creer, que con esta esperanza perpetua y incesible, sea el fiel invariable de la Valanza, en que amistosamente se equilibren todas las Potencias fatigadas del sudor y incertidumbre de las Vatallas, no quedando algun arbitrio a ninguna de las partes para alterar este equilibrio federal, por via de ningun contrato de Renuncia ni retrocesion, pues combence la razon de su permanencia la que motiva el admittir le, formandose una constitucion fundamental que regle con ley inalterable la subcesion en lo por venir, he deliverado en consequencia de lo referido, y por el amor a los Españoles y conocimiento de lo que al suyo devo, y las repetidas experiencias de su fidelidad, y por retribuyr a la Divina Providencia con la resignacion a su distino el gran veneficio de haver me colocado, y maintenido en el trono de tan illustres y venemeritos vasallos, el abdicar por mj, y todos mis descendientes el derecho de subceder en la Corona de Francia, deseando no apartarme de vivir y morir con mis amados y fideles Españoles, dejando a toda mi descendencia el vinculo inseparable de su fidelidad y amor; y para que esta deliveracion tenga el devido efecto, y cese el que se hà considerado uno de los principales motivos de la guera, que hasta aqui hà affligido a la Europa. De mi proprio motu, libre expontanea, y grata voluntad, yo D. Phelipe por la gracia de Dios Rey de Castilla, de Leon, de Aragon, de las dos Sizilias, de Hierusalem, de Navarra, de Granada, de Toledo, de Valencia, de Gallicia, de Mallorca, de Sevilla, de Zerdeña, de Cordoüa, de Corsega, de Murcia, de Jaen, de los Algarves, de Algecira, de Gibraltar, de las Islas de Canaria, de

las Indas Orientales y Occidentales, Islas y tierra firme del Mar Oceano, Archiduque de Austria, Duque de Borgoña, de Bravante y Milan, Conde de Apspurg, de Flandes, Tirol y Barzelona, Señor de Vizcaya y Molina, etc. Por el presente instrumento pro mi mismo, por mis herederos y subcesores, renuncio, abandono, y me desisto para siempre jamas de todas pretensiones, derechos y titulos que yo o qualquiera descendiente mio, aya desde ahora, o pueda haver en qualquier tiempo que subceda en lo futuro a la subcesion de la Corona de Francia, y me declaro y hè por excluido, y apartado, y o y mis hijos herederos y descendientes perpetuamente porexcluidos e inabilitados absolutamente y sin limitacion, diferencia y distincion de personas grados, sexos, y tiempos de la accion y derecho de subceder en la Corona de Francia, y quiero y consiento por mi y los dichos mis descendientes que desde ahora para entonces, se tenga por passado transferido en aquel que por estar yo y ellos excluidos inabilitados y incapaces se hallare siguiente en grado, e immediato al Rey pro cuya muerte vacare, y se huviere de regular y diferir la subcession de la dicha Corona de Francia en qualquier tiempo y casso, paraque la haya y tenga como legitimo y Vendadero subcesor, asi como si yo y mis descendientes no huieramos nacido, ni fuesemos en el mundo, porque por tales hemos de ser tenidos y reputados, para que en my persona y la de ellos ne se pueda considerar ni hazar fundamento de representacion activa o passiva, principio o continuacion de linea efectiva contemptiva de substancia sangre o calidad, ni derivar la descendencia o computacion de grados de las personas del Rey Christianissimo mi Señor y mi abuelo, ni del Señor Delphin mi Padre, ni de los gloriosos Reyes sus progenitores, ni para otro algun efecto de entrar en la subcesion ni preocupar el grado de proximidad y excluir le de el a la persona que como dicho es, se allare siguiente en grado. Yo quiero consiento por mi mismo y por mi descendientes que desde ahora como entonces, sea mirado y considerado este derecho, como pasado y trasladado al Duque de Berry mi hermano, y a sus hijos y descendientes masculinos nacidos en constante legitimo matrimonio, y en defecto de sus lineas masculinas al Duque de Orleans mi tio, y a sus hijos y descendientes masculinos nacidos en constante legitimo matrimonio, y en defecto de sus lineas al Duque de Bourbon mi primo y a sus hijos y descendientes masculinos nacidos en constante legitimo matrimonio, y asi subcesivamente a todos los principes de la Sangre de Francia sus hijos y descendientes masculinos para siempre Jamas, segun la colocacion y la orden con que ellos

fueren llamados a la Corona por el derecho de su nacimientis y por consequencia a aquel de los dichos Principes, que (siendo como dicho es yo y todos mis dichos descendientes excluidos, inabilitados e incapaces) se pudiere hallar mas cercano en grado immediato despues de aquel Rey por la muerte del qual subcediere la vacante de la Corona de Francia, y aquien deviere pertenecer la Subcesion en qualquiera tiempo y en qualquiera casso que pueda ser, para que el la posea como subcesor legitimo y verdadero de la misma manera que si yo, y mis descendientes no huuieramos nacido. Y en consideracion de la mayor firmeza del Acto de Abdicacion de todos los derechos y titulos che me asistian ami y o todos mis hijos y descendientes para la Subcesion de la referida Corona de Francia, me aparto y desisto expecialmente del que pudo sobrevenir a los derechos de naturaleza por las Lettras Patentes, o instrumento por el qual el Roy mi abuelo, me conservó, reservó y havilito el derecho de Subcesion a la Corona de Francia, cuyo instrumento fue despachado en Versalles en el mes de Diziembre del año de mil y setecientos, y pasado, aprovado y registrado por el Parlamento, y quiero que no me pueda servir de fundamento para los efectos en el prevenidos, y le refuto y renuncio, y le doy por nullo, irrito, y de ningun valor y por cancelado, y como si tal instrumento no se huviese executado, y prometo y me obligo en fe de palabra real, que en quanto fuere de mi parte, y de los dichos mis hijos y descendientes que son y seran procurarè la observancia y complimiento de esta escriptura, sin permitir ni consentir que se vaya o venga contra ello directe, o indirecte en todo o en parte y me desisto y aparto de todos y qualesquiera remedios savidos o ignorados ordinarios o extraordinarios y que por derecho commun a Privilegio expecial nos puedan pertenecer a mi y a mis hijos y descendientes para reclamar decir y alegar contra lo suso dicho, y todos ellos los renuncio, y expecialemente el de la lazion evidente enorme y enormissima que se pueda considerar haver intervenido en la desistencia y renunciacion del derecho de poder en algun tiempo subceder en la referida Corona, y quiero que ninguno de los referidos remedios, ni otros de qualquier nombre y ministerio importancia y calidaud que sean nos valgan, ni nos puedan valer, y si de hecho, on con algun color quisieremos ocupar el dicho Reyno por fuerza de armas haciendo ô moviendo guerra ofensiva o defensiva desde ahora para entonces se tenga jusgue y declare por ilicita, injusta y mal atentada, y por violencia, imbasion y usurpacion, hecha contra razon y conciencia, y por el contrario se jusgue y califique por justa, licita y

permitida la que se hiciere, o moviere pol el que por mi exclusion y de los dichos mis hijos y descendientes deviere subceder en la dicha Corona de Francia al qual sus subditos y naturales le hayan de acoger y obedecer, hacer y prestar el juramento y omenage de fidelidad, y servirle le como à su Rey y Señor legitimo. Y este desistimiento y renunciacion per my y los dichos mis hijos y descendientes hà de ser firme estable valida e irrevocable perpetuamente para siempre jamas. Y digo y prometo que no hé hecho ni harè protextacion o reclamacion en publico o en secreto en contrario que pueda impedir o disminuir la fuerza de lo contenido en esta escriptura, y que si la hiciere aun que sea jurada, no valga ni pueda tener fuerza; y para mayor firmeza y seguridad de lo contenido en esta renuncia, y de lo dicho y prometido por mi parte en ella, empeño de nuevo mi fee y palabra real, y juro solemnemente por los Evangelios contenidos en este Missal sobre que pongo la mano derecha, que yo observarè mantendrè y cumplirè este acto y instrumento de Renunciacion tanto por mi como por todos mis subcesores herederos y descendientes en todas los clausulas en le contenidas segun el sentido y construccion mas natural literal y evidente, y que de este juramento no hè pidido ni pedirè relaxacion, y que si se pidiere por alguna persona particular, o se concediere *motu proprio* no usarè, ni me valdrè de ella, antes para en casso que se me conceda, hago otro tal juramento paraque siempre aya y quede uno sobre todas las relaxaciones que me fuesen concedidas, y otorgo este escriptura ante el presente Secretario de este mi Reyno, y lo firmè y mandè Sellar con mi real Sello, siendo testigos prevenidos y llamados el Cardenal D. Francisco de Judice Inquisidor General y Arzobispo di Montreal de mi Consejo de Estado. D. Joseph Frz. de Valasco, y Tobar Condestable de Castilla. Duque de Frias, Gentilhombre de mi Camara mi Mayordomo mayor, Copero Mayor, y Cazador mayor D. Juan Carlos Alonzo Perez de Gusman el Bueno Duque de Medina Sidonia Cavallero del Orden de Sancti Spiritus mi Cavallerizo mayor, Gentilhombre de mi Camara y de mi Consejo de Estado. D. Francisco Andres de Venavides Conde de Sant Istevant, de mi Consejo de Estado y Mayordomo mayor de la Reyna. D. Carlos Homodei Lasso de la Vega Marques de Almonacir y Conde de Casa Palma Gentilhombre de mi camara, de Consejo de Estado y Cavalerizo mayor de la Reyna. D. Restayno Cantelmo Duque de Popoli Cavallero de la Orden de Sancti Spiritus Gentilhombre de mi Camara y Capitan de mis Guardias de Corps Italianas. D. Fernando de Aragon y Moncada

Duque de Montalto, Marques de los Véles Commendador de Silla y Benazul en la Orden de Montessa Gentilhombre de mi Camara y de mi Consejo de Estado. D. Antonio Sevastian de Toledo Marques de Mancera, Gentilhombre de mi Camara, de mi Consejo de Estado, y Presidente del de Italia. D. Juan Domingo de Haro y Gusman Comendador mayor en la Orden de Santiago de mi Consejo de Estado. D. Joachim Ponze de Leon Duque de Arcos, Gentilhombre de mi Camara Comendador mayor en la Orden de Calatrava de mi Consejo de Estado. D. Domingo de Judize Duque de Jovenazo de mi Consejo de Estado. D. Manuel Colomas Marques de Canales Gentilhombre de mi Camara, de mi Consejo de Estado y Capitan General de la Artilleria de España. D. Joseph de Solis Duque de Montellano de mi Consejo de Estado. D. Rodrigo Manuel Manrique de Lara Conde de Frigiliana Gentilhombre de mi Camara de mi Consejo de Estado y Presidente del de Indias. D. Isidro de la Cueva Marques de Bedmar Cavallero de la Orden de Santi Spiritus Gentilhombre de mi Camara, de mi Consejo de Estado, Presidente del de Ordenes, y primer Ministro de la Guerra. D. Francisco Ronquillo Brizeño Conde de Gramedo, Governado de mi Consejo de Castilla. D. Lorenzo Armangual Obispo de Gironda, de mi Consejo y Camara de Castilla y Governador del de hacienda. D. Carlos de Borja y Cantellas Patriarcha delas Indias de mi Consejo delas ordenes, mi Capellan y Limosnero mayor, y Vicario General de mis exercitos. D. Martin de Gusman Marques de Monte Alegre Gentilhombre de mi Camara y Capitan de mi Guardia de Alavarderos. D. Pedro de Toledo Sarmiento Conde de Gondomar de mi Consejo y Camara de Castilla. D. Francisco Rodriguez de Mendaroz-Queta Comisario General de Cruzada, y A. Melchior de Abellaneda Marques de Valdecañas de mi Consejo de Guerra y Director General de la Infantería de España. Yo el Rey. Yo D. Manuel de Vadillo y Valasco Cavellera de la Orden de Santiago, Comendador de Bozuelo en la de Calatrava Secretario de Estado de su Magestad Notario y Ecrivano Publico en sus Reynos y Señorios, que presentè fui al otorgamiento y todo lo demas de suso contenido doy fe de ello. Y en testimonio de Verdad lo signè y firme de mi nombre en Madrid à cinco de Noviembre de mil setecientos y doze. D. Manuel de Vadillo y Velasco. Por tanto para el resguardo de los combenios federales de que se hace mencion en el dicho instrumento aqui inserto, y para que conste autenticamente a todas las partes donde combenga y pretendan valerse de su contenido, y para todos los effectos que huviere lugar en de-

recho y puedan derivarse de su otorgamiento devajo de las clausulas condiziones y supuestos en el contenidos, da mandè despachar la présente firmada da mi mano, Sellada con el sello de mis Reales armas y refrendada de mi infrascripto Secretario de Estado y Notario mayor de Estos Reynos. En Buen Retiro a siete de Noviembre de mil setecientos y doze.

Yo El Rey. (L. S.) Manuel de Vadillo y Velasco.

No. 10.

Renonciation avec serment de Charles, fils de France, Duc de Berry, à la couronne d'Espagne, et à tout droit d'y pouvoir un jour succéder, lui ou ses descendants, à perpétuité. A Marly, le 24 *Novembre* 1712.

Charles, fils de France, Duc de Berry, d'Alençon et d'Angoulesme, Vicomte de Vernon, Andely et Grisors, Seigneur des chastellenies de Rignac et Merpins, à tous les Rois, Princes, Républiques et Communautez, et à tous autres corps et particuliers présents et avenir, sçavoir faisons, toutes les puissances de l'Europe se trouvant presque ruinées à l'occasion des présentes guerres, qui ont porté la désolation dans les frontières et plusieurs autres parties des plus riches Monarchies et autres Estats, on est convenu dans les congrez et traités de paix qui se négocient avec la Grande-Bretagne, d'établir un équilibre et des limites politiques entre les royaumes dont les intérests ont été et se trouvent encore le triste sujet d'une sanglante dispute, et de tenir pour maxime fondamentale de la conservation de cette paix, que l'on doit pourvoir à ce que les forces de ces royaumes ne soient point à craindre et ne puissent causer aucune jalousie ; ce que l'on a cru ne pouvoir établir plus solidement qu'en les empeschant de s'étendre, et en gardant une certaine proportion, afin que les plus faibles étant unis, puissent se défendre contre de plus puissants, et se soutenir respectivement contre leurs égaux.

Pour cet effet, le Roy, notre très-honoré Seigneur et ayeul, et le Roy d'Espagne, nostre très-cher frère, sont convenus et demeurent d'accord avec la Reine de la Grande-Bretagne, qu'il sera fait des renonciations réciproques par tous les Princes et futurs de la couronne de France et de celle d'Espagne, à tous droits qui peuvent appartenir à chacun d'eux sur la succession de l'un et de l'autre royaume, en établissant un droit habituel à la succession de la couronne d'Espagne, dans la ligne qui sera habilitée et déclarée immé-

diate à celle du Roy Philippe V, nostre frère, par les Estats d'Espàgne, qui ont dû s'assembler pour cette fin, en y faisant une balance immuable pour maintenir l'équilibre qu'on veut mettre dans l'Europe; et passant à particulariser tous les cas prévus de l'union, pour servir d'exemple de tous ceux qui peuvent se rencontrer, il a été aussi convenu et accordé entre le Roi très-chrétien, nostre très-honoré Seigneur et ayeul, le Roy Philippe V, nostre frère, et la Reine de la Grande-Bretagne, que ledit Roy Philippe renoncera, pour luy et pour ses descendants, à l'espérance de succéder à la couronne de France; que, de nostre costé, nous renoncerons aussi, pour nous et pour nos descendants, à la couronne d'Espagne; que le Duc d'Orléans, nostre très-cher oncle, fera la même chose: de sorte que toutes les lignes de France et d'Espagne, respectivement et relativement, seront exclues pour toujours et en toutes manières de tous les droits que les lignes de France pourraient avoir à la couronne d'Espagne, et les lignes d'Espagne à la couronne de France; et enfin que l'on empêchera que, sous prétexte desdites renonciations, ny sous quelque autre prétexte que ce soit, la maison d'Autriche n'exerce les prétentions qu'elle pourrait avoir à la succession de la monarchie d'Espagne, d'autant qu'en unissant cette monarchie aux pays et Estats héréditaires de cette maison elle serait formidable, même sans l'union de l'Empire aux autres puissances qui sont entre deux, et se trouveraient comme enveloppées, ce qui détruirait l'égalité qu'on établit aujourd'huy pour assurer et affermir plus parfaitement la paix de la chrétienté, et ôter toutes jalousies aux puissances du Nord et de l'Occident, qui est la fin qu'on se propose par cet équilibre politique, en éloignant et excluant ainsi toutes ces branches, et appelant à la couronne d'Espagne, au défaut des lignes du Roy Philippe V, nostre frère, et de tous ses enfants et descendants, la maison du duc de Savoie, qui descend de l'Infante Catherine, fille de Philippe II, ayant été considéré qu'en faisant ainsi succéder immédiatement ladite maison de Savoie, on peut établir comme dans son centre cette égalité et cet équilibre entre ces trois puissances, sans quoy on ne pourrait éteindre le feu de la guerre qui est allumé, et capable de tout ruiner.

Voulant donc concourir par nostre désistement et par l'abdication de tous nos droits, pour nous, nos successeurs et descendants, à établir le repos universel et assurer la paix de l'Europe, parce que nous croyons que ce moyen est le plus sûr et le plus précis dans les terribles circonstances de ce temps; nous avons

résolu de renoncer à l'espérance de succéder à la couronne d'Espagne et à tous les droits qui nous y appartiennent et peuvent appartenir, par quelque titre ou moyen que ce soit; et, afin que cette résolution ait tout son effet, et aussi au moyen de ce que le Roy Philippe V, nostre frère, a de sa part fait sa renonciation à la couronne de France, le cinquième du présent mois de novembre; de notre pure, libre et franche volonté, et sans que nous y soyons induit par aucune crainte respectueuse, ny par aucun autre égard que ceux ci-dessus exposés; nous nous déclarons et tenons dès maintenant, nous, nos enfants et descendants, pour exclus et inhabiles absolument et à jamais, sans limitation ny distinction de personnes, de degrez, ny de sexe, de toute action et de tout droit à la succession de la couronne d'Espagne; nous voulons et consentons, pour nous, nosdits enfants et descendants, que, dès maintenant et pour toujours, on nous tienne, nous et eux, en conséquence des présentes, pour exclus et inhabiles, de même que tous les autres descendants de la maison d'Autriche, qui, comme il a été rapporté et supposé, doivent aussi être exclus, en quelque degrez que nous nous trouvions les uns et les autres, et que la succession nous arrive, nostre ligne, celle de tous nos descendants, et tous les autres de la maison d'Autriche, comme il a été dit, devant en être séparées et exclues; que, par cette raison, le royaume d'Espagne soit censé être dévolu et transféré à qui la succession doit en tel cas être transférée et dévolue, en quelque temps que ce soit, en sorte que nous l'ayons et tenions pour légitime et véritable successeur, parce que, par les mêmes raisons et motifs, et en conséquence des présentes, nous, ny nos descendants ne devons plus être considérez comme ayant aucun fondement de représentation active ou passive, en faisant une continuation de ligne effective ou contentieuse de substance, sang ou qualité, ny même tirer droit de nostre descendance, ny compter nos degrez des personnes de la Reine Marie-Thérèse d'Autriche, nostre très-honorée dame et ayeule, ny de la Reine Anne d'Autriche, nostre très-honorée dame et bizayeule, ny des glorieux Roys leurs ancestres; au contraire, nous ratifions les clauses de leurs testaments et les renonciations faites par lesdites dames nos ayeules et bizayeules; nous renonçons pareillement au droit qui nous peut appartenir et à nos enfants et descendants, en vertu du testament du Roi Charles II, qui nonobstant ce qui est rapporté ci-dessus, nous appelle à la succession de la couronne d'Espagne, la ligne de Philippe V venant à manquer; nous nous

désistons donc de ce droit et y renonçons, pour nous, nos enfants et descendants, promettons et nous obligeons, pour nous et nosdits enfants et descendants, de nous employer de tout nostre pouvoir pour faire accomplir ce présent acte, sans permettre ni souffrir que, directement ny indirectement, on revienne contre, soit en tout, soit en partie, et nous nous désistons de tous moyens ordinaires ou extraordinaires qui, de droit commun ou par quelque privilège spécial, pourraient nous appartenir, à nous, nos enfants et descendants, auxquels moyens nous renonçons aussi absolument et en particulier à celui de l'évidente, énorme et très-énorme lésion qui se peut trouver en ladite renonciation à la couronne d'Espagne; et voulons qu'aucun desdits moyens n'ait, ny ne puisse avoir d'effet, et que, si sous ce prétexte ou toute autre couleur, nous voulions nous emparer dudit royaume force d'armes, la guerre que nous ferions ou exciterions soit tenue pour injuste, illicite et induement entreprise, et qu'au contraire la guerre que nous ferait celui qui, en vertu de cette renonciation, aurait droit de succéder à la couronne d'Espagne, soit tenue pour permise et juste, et que tous les sujets et peuples d'Espagne le reconnaissent, luy obéissent, le défendent, luy fassent hommage et luy prêtent serment de fidélité, comme à leur Roy et légitime Seigneur.

Et, pour plus grande sûreté de ce que nous disons et promettons pour nous, et au nom de nos enfants, nous jurons solennellement sur les saints évangiles contenus au missel, sur lequel nous mettons la main droite, que nous le garderons, maintiendrons et accomplirons en tout et pour tout; que nous ne demanderons jamais de nous en faire relever, et que si quelqu'un le demande pour nous, ou qu'il nous soit accordé, *motu proprio*, nous ne nous en servirons, ny prévaudrons; bien plus, en cas qu'on nous l'accordât, nous faisons d'abondant cet autre serment que celuy-cy subsistera et demeurera toujours, quelque dispenses qu'on nous puisse accorder; nous jurons et promettons aussi que nous n'avons fait ny ferons, ny en public, ny en secret, aucune protestation, ny réclamations contraires qui puissent empêcher ce qui est contenu en ces présentes, ou en diminuer la force; et que si nous en faisions, de quelques serments qu'elles fussent accompagnées, elles ne pourraient avoir ny force ny vertu, ny produire aucun effet.

En foy de quoy, et pour rendre ces présentes authentiques, elles ont été passées par-devant mestre Alexandre Lefèvre et An-

toine Le Moyne, Conseillers du Roy, Notaires, Garde-notes de Sa Majesté, et Garde-scel au Chastelet de Paris, soussignez; lesquels ont du tout délivré le présent acte.

Et, pour faire publier et enregistrer ces présentes partout où besoin sera, monseigneur le Duc de Berry a constitué ses Procureurs-généraux et spéciaux les porteurs des expéditions par duplicata d'icelles, auxquelles mondit Seigneur en a donné pouvoir et mandement spécial par cesdites présentes. A Marly, le vingt-quatrième jour de novembre mil sept cent douze, avant midy, et a signé le présent duplicata et un autre, et leur minute demeur e audit Le Moyne, Notaire. Signez Charles Lefèvre et Le Moyne, et, à côté, scellé ledit jour.

Ensuite est écrit: Nous Hiérôme d'Argonges, Chevalier seigneur de Fleury, Conseiller du Roy en ses conseils, Maître des Requestes honoraires de son hôtel, Lieutenant civil de la ville prévosté et vicomté de Paris, certifions à tous qu'il appartiendra, que Mestres Alexandre Lefèvre et Antoine Le Moyne, qui ont signez l'acte des autres parts, sont Conseillers du Roy, Notaires, Gardes-notes de Sa Majesté, et Garde-scel au Chastelet de Paris, et que foy doit être ajoutée, tant en jugement que dehors, aux actes par eux reçus; en foy de quoy nous avons signé ces présentes, icelles fait contre-signer par nostre secrétaire, et apposer le cachet de nos armes. A Paris, ce vingt-quatrième novembre mil sept cent douze.

No. XI.

Traité de paix et d'amitié entre Sa Majesté très-chrétienne, et Sa Majesté la Reine de la Grande-Bretagne. Conclu à Utrecht, le 31 *mars*—11 *avril, A.* 1713.

Louis, par la grâce de Dieu, Roi, etc., etc., etc.

D'autant qu'il a plu à Dieu tout-puissant et miséricordieux, pour la gloire de son saint nom, et pour le salut du genre humain, d'inspirer en son temps aux Princes le désir réciproque d'une réconciliation qui fît cesser les malheurs qui désolent la terre depuis si longtemps, qu'il soit notoire à tous, et à un chacun à qui il appartiendra, que, par la direction de la providence divine, le sérénissime et très-puissant Prince Louis XIV, par la grâce de Dieu Roy T. C. de France et de Navarre, et la sérénissime et très-puissante Princesse Anne, par la grâce de Dieu Reine de la Grande-Bretagne, remplis du désir de procurer

(autant qu'il est possible à la prudence humaine de le faire) une tranquillité perpétuelle à la chrétienté, et portés par la considération de l'intérest de leurs sujets, sont enfin demeurés d'accord de terminer cette guerre, si cruelle par le grand nombre de combats, si funeste par la quantité du sang chrétien qu'on y a versé, laquelle, après s'être malheureusement allumée il y a plus de dix ans, a toujours continué depuis avec opiniâtreté. Leurs susdites Majestés, afin de poursuivre un projet si digne d'elles, ont nommé et constitué de leur propre mouvement, et par le soin paternel qu'elles ont de leurs sujets et pour la chrétienté, leurs ambassadeurs extraordinaires et plénipotentiaires respectifs, sçavoir S. M. T. C. le sieur Nicolas, marquis d'Huxelles, maréchal de France, etc., etc., auxquels leurs Majestés Royales ont donné leurs pleins pouvoir pour traiter, convenir et conclure une paix ferme et stable. Les susdits ambassadeurs extraordinaires et plénipotentiaires après plusieurs conférences épineuses tenues dans le congrez étably pour cette fin à Utrecht ayant enfin surmonté, sans l'intervention d'aucune médiation, tous les obstacles qui s'opposaient à l'accomplissement d'un dessein si salutaire, et après avoir demandé à Dieu qu'il daignât conserver à jamais leur ouvrage en son entier, et qu'il en fît ressentir le fruit à la postérité la plus reculée, et s'être communiqué respectivement leurs plein pouvoirs, dont les copies seront insérées de mot à mot à la fin du présent traité, et en avoir duement fait l'échange, sont enfin convenus des articles d'une paix et amitié mutuelle entre leurs dites Majestez Royales, leurs peuples et sujets de la manière qu'il suit.

1. Il y aura une paix universelle et perpétuelle, une vraye et sincère amitié entre le sérénissime et très-puissant Prince Louis XIV, Roy très-chrétien et la sérénissime et très-puissante Princesse Anne, Reine de la Grande-Bretagne, leurs héritiers et successeurs, leurs royaumes, états et sujets tant en dedans qu'au dehors de l'Europe; cette paix sera inviolablement observée entre eux si religieusement et sincèrement qu'ils feront mutuellement tout ce qui pourra contribuer au bien, à l'honneur et à l'avantage l'un de l'autre, vivant en tout comme de bons voisins et avec une telle confiance et si réciproque que cette amitié soit de jour en jour fidellement cultivée, affermie, et augmentée.

2. Toutes inimitiez, hostilitez, guerres et discordes entre le Roi très-chrétien et ladite Reine de la Grande-Bretagne, et pareillement entre leurs sujets, cesseront et demeureront éteintes et

abolies, en sorte qu'ils éviteront soigneusement à l'avenir de se faire de part ni d'autre aucun tort, injure ou préjudice, et qu'ils s'abstiendront de s'attaquer, piller, troubler, ou inquiéter en quelque manière que ce soit, par terre, par mer ou autres eaux, dans tous les endroits du monde, et particulièrement dans toute l'étendue des royaumes, terres et seigneuries dud. Roy et de lad. Reine sans aucune exception.

3. Tous les torts, dommages, injures, offenses que led. Roy T. C. et lad. Reine de la Grande-Bretagne et leurs sujets auront soufferts et reçues les uns des autres pendant cette guerre, seront absolument oubliez; et leurs Majestez et leurs sujets, pour quelque cause ou occasion que ce puisse être, ne feront désormais, ni commanderont, ou ne souffriront qu'il soit réciproquement fait de part ni d'autre, aucun acte d'hostilité, ou d'injustice, trouble ou préjudice, de quelque nature ou manière que ce puisse être, par autruy ou par soi-même, en public ou en secret, directement ou indirectement, par voye de fait ou sous prétexte de justice.

4. Et pour affermir de plus en plus l'amitié fidelle et inviolable qui est établie par cette paix, et pour prévenir tous prétextes de défiance qui pourraient naistre, en quelque temps que ce soit, à l'occasion de l'ordre et droit de succession héréditaire établie dans le royaume de la G. B. de la manière qu'elle a été limitée par les lois de la G. B. tant sous le règne du Roy Guillaume III de très-glorieuse mémoire, que sous le présent règne de lad. Reine, en faveur de ses descendants, et au défaut d'iceux, en faveur de la sérénissime Princesse Sophie, douairière de Brunswick Hanover, et ses héritiers dans la ligne protestante d'Hanover; et afin que cette succession demeure ferme et stable, le Roy T. C. reconnaist sincèrement et solennellement ladite succession au royaume de la G. B. limitée comme dessus, et déclare et promet en foy et parole de Roy, tant pour luy que pour ses héritiers et successeurs, de l'avoir pour agréable à présent et à toujours, engageant à cet effet son honneur et celuy de ses successeurs, promettant en outre sur la même foy et parole de Roy et sur le même engagement d'honneur, tant pour lui que pour ses héritiers et successeurs, de ne reconnaistre jamais qui que ce soit pour Roy ou Reine de la G. B., si ce n'est lad. Reine et ses successeurs selon l'ordre de lad. limitation; et afin de donner encore plus de force à cette reconnaissance et promesse, le Roy T. C. promet que lui et ses successeurs et héritiers apporteront tous leurs soins pour empêcher que la personne qui du vivant

du Roy Jacques II avait pris le titre de Prince de Galles, et au décès dud. Roy celuy de Roy de la G. B., et qui depuis peu est sortie volontairement du royaume de France pour aller demeurer ailleurs, ne puisse y rentrer, ni dans aucune des provinces de ce Royaume, en quelque temps et sous quelque prétexte que ce puisse être.

5. Le Roy T. C. promet de plus tant en son nom que pour ses héritiers et successeurs, de ne jamais troubler, ni molester la Reine de la G. B., ses héritiers et successeurs, issus de la ligne protestante, qui posséderont la couronne de la G. B. et les Etats qui en dépendent; et de ne donner, ni luy, ni aucun de ses successeurs, directement ou indirectement, par terre ou par mer, en argent, armes, munitions, appareil de guerre, vaisseaux, soldats, matelots, en quelque manière et en quelque temps que ce soit, aucune assistance, secours, faveur ni conseil à aucune personne ou personnes quelles qu'elles puissent être qui sous quelque prétexte que ce soit voudraient s'opposer à l'avenir à lad. succession soit ouvertement ou en fomentant des séditions et formant des conjurations contre tel Prince ou Princes qui en vertu des actes du parlement occuperont le trosne de la G. B., ou contre le Prince ou la Princesse en faveur de qui lad. succession à la couronne de la G. B. sera ouverte par lesd. actes du parlement.

6. D'autant que la guerre, que la présente paix doit éteindre, a été allumée principalement, parce que la seureté et la liberté de l'Europe ne pouvaient pas absolument souffrir que les couronnes de France et d'Espagne fussent réunies sur une même teste, et que sur les instances de Sa Majesté Britannique et du consentement tant de S. M. T. C. que de S. M. Cath. on est enfin parvenu, par un effet de la providence divine, à prévenir ce mal pour tous les temps à venir, moïennant des renonciations conçues dans la meilleure forme, et faites en la manière la plus solennelle dont la teneur suit ci-après...

(S'ensuivent ici les actes concernant les renonciations réciproques du Roy Philippe d'une part, et de M. le Duc de Berry et de M. le Duc d'Orléans de l'autre, etc.)

Etant suffisamment pourvû par la renonciation ci relative, laquelle doit être éternellement une loi inviolable et toujours observée, à ce que le Roy catholique, ni aucun Prince de sa postérité puisse jamais aspirer ni parvenir à la couronne de France; et d'un autre costé les renonciations réciproques à la couronne d'Espagne faites par la France, ainsi que les autres actes qui

établissent la succession héréditaire à la couronne de France, lesquelles tendent à une même fin, ayant aussi suffisamment pourvu à ce que les couronnes de France et d'Espagne demeurent séparées et désunies, de manière que, les susd. renonciations, et les autres transactions qui les regardent, subsistant dans leur vigueur et étant conservées de bonne foi, ces couronnes ne pourront jamais être réunies, ainsi le sérénissime Roy T. C. et la sérénissime Reine de la G. B. s'engagent solemnellement, et par parole de Roy, l'un à l'autre, qu'eux ni leurs héritiers et successeurs ne feront jamais rien, ni ne permettront que jamais il soit rien fait capable d'empêcher les renonciations et autres transactions susd. d'avoir leur plein et entier effet ; au contraire leurs Majestez Royales prendront un soin sincère et feront leurs efforts, afin que rien ne donne atteinte à ce fondement du salut public, ni ne puisse l'ébranler : en outre S. M. T. C. demeure d'accord et s'engage que son intention n'est pas de tâcher d'obtenir, ni même d'accepter à l'avenir, que, pour l'utilité de ses sujets, il soit rien changé, ni innové dans l'Espagne ni dans l'Amérique espagnole, tant en matière de commerce qu'en matière de navigation, aux usages pratiquez en ces païs sous le règne du feu Roy d'Espagne Charles II, non plus que de procurer à ses sujets dans les susd. païs aucun avantage qui ne soit pas accordé de même dans toute son étendue aux autres peuples et nations lesquelles y négotient.

7. La navigation et le commerce seront libres entre les sujets de leurs dites Majestés, de même qu'ils l'ont toujours été en temps de paix, et avant la déclaration de la dernière guerre, et particulièrement de la manière dont on est convenu entre les deux nations pour un traité de commerce aujourd'hui conclu.

8. Les voyes de la justice ordinaires seront ouvertes et le cours en sera libre réciproquement dans tous les royaumes, terres et seigneuries de l'obéissance de leurs Majestez, et leurs sujets de part et d'autre pourront librement y faire valoir leurs droits, actions et prétentions, suivant les loix et statuts de chaque païs.

9. Le Roy T. C. fera raser toutes les fortifications de la ville de Dunkerque, combler le port, ruiner les écluses, qui servent au nétoiement dud. port, le tout à ses dépends et dans le terme de cinq mois après la paix conclue et signée, sçavoir les ouvrages de mer dans l'espace de deux mois, et ceux de terre avec lesd. écluses dans les trois suivants, à condition encore que lesd. fortifications, ports et écluses ne pourront jamais être rétablis, laquelle démolition toutefois ne commencera qu'après que le Roy T. C. aura

été mis en possession généralement de tout ce qui doit être cédé en équivalent de la susd. démolition.

10. Le Roy très-chrétien restituera au royaume et à la Reine de la G. B. pour les posséder en plein droit et à perpétuité, la baye et le détroit d'Hudson, avec toutes les terres, mers, rivages, fleuves et lieux qui en dépendent, et qui y sont situés, sans rien excepter de l'étendue desd. terres et mers possédées présentement par les François, le tout aussi bien que tous les édifices et forts construits, tant avant que depuis que les François s'en sont rendus maîtres, seront délivrés de bonne foy en leur entier, et en l'état où ils sont présentement sans en rien démolir, avec toute l'artillerie, boulets, la quantité de poudre, proportionnée à celle des boulets (si elle s'y trouve), et autres choses servant à l'artillerie, à ceux des sujets de la Reine de la G. B., munis de ses commissions pour les demander et recevoir, dans l'espace de six mois, à compter du jour de la ratification du présent traité, ou plus tôt si faire se peut, à condition toutefois qu'il sera permis à la compagnie de Québec et à tous autres sujets quelconques du Roy T. C. de se retirer desd. terres et détroits, par terre ou par mer, avec tous leurs biens, marchandises, armes, meubles et effets de quelque nature ou espèce qu'ils soient, à la réserve de ce qui a été excepté cy dessus. Quant aux limites entre la baye d'Hudson et les lieux appartenant à la France, on est convenu réciproquement qu'il sera nommé incessamment des commissaires de part et d'autre, qui les détermineront dans le terme d'un an, et il ne sera pas permis aux sujets des deux nations de passer lesd. limites pour aller les uns aux autres, ni par mer, ni par terre. Les mêmes commissaires auront le pouvoir de régler pareillement les limites entre les autres colonies françaises et britanniques dans ces païs là.

11. Le Roy trés-chrétien fera donner une juste et équitable satisfaction aux intéressez de la compagnie anglaise de la baye d'Hudson, des pertes et dommages qu'ils peuvent avoir soufferts pendant la paix, de la part de la nation française, par des courses ou déprédations tant en leurs personnes que dans leurs colonies, vaisseaux et autres biens, dont l'estimation sera faite par des commissaires qui seront nommés à la réquisition de l'une ou de l'autre des parties; les mêmes commissaires prendront connaissance des plaintes qui pourront être faites, tant de la part des sujets de la G. B. touchant les vaisseaux pris par les Français durant la paix, et des dommages qu'ils pourront avoir soufferts l'année

dernière dans l'Isle de Monferrat ou autre, que de la part des sujets de la France touchant les capitulations faites dans l'isle de Névis et au fort de Gambie, et des vaisseaux français qui pourraient avoir été pris par les sujets de la G. B. en temps de paix; et toutes autres contestations de cette nature meues entre les deux nations, et qui n'ont point encore été réglées ; et il en sera fait de part et d'autre bonne et prompte justice.

12. Le Roy T. C. fera remettre à la Reine de la G. B. le jour de l'échange des ratifications du présent traité de paix, des lettres et actes authentiques qui feront foi de la cession faite à perpétuité à la Reine et à la couronne de la G. B. de l'isle de Saint-Christophe que les sujets de Sa Majesté B. désormais posséderont seuls, de la nouvelle Ecosse autrement dite Acadie, en son entier conformément à ses anciennes limites, comme aussi de la ville de Port-Royal, maintenant appelée Annapolis-Royale, et généralement de tout ce qui dépend desd. terres et isles de ce païs là, avec la souveraineté, propriété, possession et tous droits acquis par traitez ou autrement que le Roi T. C., la couronne de France ou ses sujets quelconques ont eus jusqu'à présent sur lesd. isles, terres, lieux et leurs habitants, ainsi que le Roi T. C. cède et transporte le tout à lad. Reine et à la couronne de la G. B., et cela d'une manière et d'une forme si ample qu'il ne sera pas permis à l'avenir aux sujets du Roy T. C. d'exercer la pêche dans lesd. mers, bayes, et autres endroits à trente lieues près des costes de la nouvelle Ecosse, au sud-est en commençant par l'isle appelée vulgairement de Sable inclusivement et en tirant au sud-ouest.

13. L'isle de Terreneuve avec les isles adjacentes appartiendront désormais et absolument à la G. B., et à cette fin le Roy T. C. fera remettre à ceux qui se trouveront à ce commis en ce païs là, dans l'espace de sept mois à compter du jour de l'échange des ratifications de ce traité, ou plus tôt si faire se peut, la ville et le fort de Plaisance, et autres lieux que les François pourraient encore posséder dans ladite isle sans que ledit Roy T. C., ses héritiers et successeurs, ou quelques-un de ses sujets, puissent désormais prétendre quoi que ce soit, et en quelque temps que ce soit, sur ladite isle, et les isles adjacentes, en tout ou en partie. Il ne leur sera pas permis non plus d'y fortifier aucun lieu, ni d'y établir aucune habitation en façon quelconque, si ce n'est des échafauts et cabanes nécessaires et usitées pour sécher le poisson, ni aborder dans ladite isle dans d'autres temps que celui qui est propre pour pêcher et nécessaire pour sécher le poisson. Dans ladite isle, il ne

sera pas permis auxdits sujets de la France de pécher et de sécher le poisson en aucune autre partie que depuis le lieu appelé Cap-de-Bona-Vista, jusqu'à l'extrémité septentrionale de ladite isle, et de là en suivant la partie occidentale jusqu'au lieu appelé Pointe-Riche. Mais l'isle dite Cap-Breton, et toutes les autres quelconques, situées dans l'embouchure et dans le golphe de Saint-Laurent, demeureront à l'avenir à la France, avec l'entière faculté au Roy T. C. d'y fortifier une ou plusieurs places.

14. Il a esté expressément convenu que dans tous les lieux et colonies qui doivent être cédées ou restituées en vertu de ce traité par le Roy T. C., les sujets dudit Roy auront la liberté de se retirer ailleurs dans l'espace d'un an avec tous leurs effets mobiliaires, qu'ils pourront transporter où il leur plaira. Ceux néanmoins qui voudront y demeurer et rester sous la domination de la G. B. doivent jouir de l'exercice de la religion catholique romaine, en tant que le permettent les loix de la G. B.

15. Les habitants du Canada et autres sujets de la France, ne molesteront point à l'avenir les cinq nations ou cantons des Indiens soumis à la G. B., ni les autres nations de l'Amérique amies de cette couronne. Pareillement, les sujets de la Grande-Bretagne se comporteront pacifiquement envers les Américains amis ou sujets de la France, et les uns et les autres jouiront d'une pleine liberté de se fréquenter pour le bien du commerce, et avec la même liberté les habitants de ces régions pourront visiter les colonies françaises et britanniques pour l'avantage réciproque du commerce sans aucune molestation, ni empêchement de part ni d'autre. Au surplus, les commissaires régleront exactement et distinctement, quels seront ceux qui seront ou devront être conservés sujets et amis de la France et de la Grande-Bretagne.

16. Toutes les lettres, tant de représailles que de marque et de contremarque qui ont été déclarées jusqu'à présent pour quelque cause et occasion que ce puisse être, demeureront et seront réputées nulles, inutiles et sans effet, et, à l'avenir, aucune desdites Majestés n'en délivrera de semblables contre les sujets de l'autre, s'il n'apparaist auparavant d'un délay ou d'un dény de justice manifeste, ce qui ne pourra être tenu pour constant à moins que la requête de celuy qui demandera des lettres de représailles n'ait été apportée ou représentée au ministre ou ambassadeur qui sera dans le païs de la part du Prince contre les sujets duquel on poursuivra lesdites lettres, afin que, dans l'espace de quatre mois, il puisse s'éclaircir du contraire, ou faire en sorte que le deffendeur satisfasse inces-

samment le demandeur; et s'il ne se trouve sur le lieu aucun ministre ou ambassadeur du Prince contre les sujets duquel on demandera lesdites lettres, lui ne les expédiera encore qu'après quatre mois expirez, à compter du jour où la requeste de celuy qui demandera lesdites lettres aura été présentée au Prince contre les sujets duquel on les demandera, ou à son conseil privé.

17. D'autant que dans les articles de la suspension d'armes conclue le 11 aoust et prorogée ensuite pour quatre mois entre les parties contractantes, il est expressément stipulé en quels cas les vaisseaux, marchandises et autres effets pris de part et d'autre, doivent demeurer à celui qui s'en est rendu maistre, ou être restituez à leur premier propriétaire, il a été convenu que dans lesdits cas, les conditions de la suspension d'armes demeureront en toute vigueur, et que tout ce qui concernera ces sortes de prises faites, soit dans les mers britannique et septentrionale ou partout ailleurs, sera exécuté de bonne foy selon leur teneur.

18. Que s'il arrivait par hazard, inadvertance ou autre cause quelle qu'elle puisse être, qu'aucun des sujets desd. Majestez fît ou entreprît quelque chose, par terre, par mer ou autres eaux, en quelque lieu du monde que ce soit, qui pût contrevenir au présent traité, et en empêcher l'entière exécution, ou de quelqu'un de ses articles en particulier, la paix et bonne correspondance rétablie entre ledit Roy T. C. et ladite Reine de la G. B. ne sera pas troublée, ni censée interrompue à cette occasion, et elle demeurera toujours au contraire en son entière et première force et vigueur; mais seulement celuy desdits sujets qui l'aura troublée, répondra de son fait particulier, et en sera puni conformément aux lois et suivant les règles établies par le droit des gens.

19. Et s'il arrivait aussi (ce qu'à Dieu ne plaise) que les mésintelligences et inimitiez éteintes par cette paix, se renouvelassent entre leurs dites Majestez, et qu'elles en vinssent à une guerre ouverte, tous les vaisseaux, marchandises et effets mobiliaires des sujets de l'une des parties qui se trouveront engagez dans les ports et lieux de la domination de l'autre n'y seront point confisqués, ni en aucune façon endommagés. Mais l'on donnera aux sujets desdites Majestez le terme de six mois entiers à compter du jour de la rupture, pendant lesquels ils pourront, sans qu'il leur soit donné aucun trouble ni empêchement, vendre, enlever et transporter où bon leur semblera, leurs biens de la nature cy-dessus exprimée et tous leurs autres effets, et se retirer eux-mêmes.

20. Il sera donné à tous et à chacun des hauts alliez de la Reine

de la G. B. une satisfaction juste et équitable, sur ce qu'ils peuvent demander légitimement à la France.

21. Le Roy T. C. en considération de la Reine de la G. B. consentira que dans le traité à faire avec l'empire, tout ce qui regarde dans ledit empire l'état de la religion, soit conforme à la teneur des traitez de Westphalie, en sorte qu'il paraisse manifestement que l'intention de Sa Majesté T. C. n'est point et n'a point esté, qu'il y ait rien de changé auxdits traitez.

22. Le Roy T. C. promet encore qu'il fera incessamment après la paix faite, faire droit à la famille d'Hamilton au sujet du duché de Châtelleraut, au duc de Richemont sur les prétentions qu'il a en France, comme au seigneur Charles Douglas touchant quelques terres en fonds qu'il répète, et à d'autres particuliers.

23. Du consentement réciproque du Roy T. C. et de la Reine de la G. B., les sujets de part et d'autre faits prisonniers pendant la guerre, seront remis en liberté sans distinction et sans rançon, en payant les dettes qu'ils auront contractées durant leur captivité.

24. Le traité de paix signé aujourd'huy entre Sa Majesté T. C. et Sa Majesté Portugaise fera partie du présent traité, comme s'il estait inséré icy mot à mot; Sa Majesté la Reine de la G. B. déclarant qu'elle a offert sa garantie, laquelle elle donne dans les formes les plus solemnelles, pour la plus exacte observation et exécution de tout le contenu dans ledit traité.

25. Le traité de paix de ce jourd'huy entre Sa Majesté T. C. et son Altesse Royale de Savoye est spécialement compris et confirmé par le présent, comme partie essentielle d'iceluy, et comme si ledit traité estait inséré icy mot à mot, Sa Majesté la Reine de la G. B. s'engageant expressément aux mêmes promesses de maintenance et de garantie stipulées par ledit traité, ou celles par elle cy-devant promises.

26. Le sérénissime Roy de Suède, ses royaumes, territoires, provinces et droits, comme aussi le grand duc de Toscane, la république de Gennes et le duc de Parme, sont inclus dans ce traité dans la meilleure manière.

27. Leurs Majestez ont aussi bien voulu comprendre dans ce trait les villes Anséatiques, nommément Lubeck, Brême et Hambourg, et la ville de Dantzick, à cet effet, qu'après que la paix générale aura été faite, elles puissent jouir à l'avenir, comme amis communs, des mêmes émoluments dans le commerce avec l'un et l'autre royaume dont ils ont cy-devant joui en vertu des traitez ou usages.

28. Seront en outre compris dans le présent traité de paix, ceux qui avant l'échange des ratifications qui en seront fournies, ou dans l'espace de six mois après, seront nommez à cet effet de part et d'autre, et dont on conviendra réciproquement.

29. Enfin les ratifications solemnelles du présent traité, expédiées en bonne et due forme, seront rapportées ou échangées de part et d'autre à Utrecht, dans l'espace de quatre semaines, ou plus tôt s'il est possible, à compter du jour de la signature.

30. En foy de quoy, nous soussignez ambassadeurs extraordinaires et plénipotentiaires du Roy T. C. et de la Reine de la G. B., avons signé les présens articles de notre main et y avons fait apposer les cachets de nos armes.

Fait à Utrecht, le 11 avril 1713.

No. XII.

Traité de la quadruple alliance du 2 août 1718.

Art. 1.—Ad reparanda ea quæ contra pacem, etc.

Art. 2.—Quandoquidem unica quæ excogitari potuit ratio ad constituendum duraturum in Europa æquilibrium ea visa fuerit, ut pro regula statuatur, ne regna Galliæ et Hispaniæ ullo unquam tempore in unam eamdemque personam, nec in unam eamdemque lineam, coalescere, unirique possent, istæque duæ monarchiæ, perpetuis retro temporibus separatæ remanerent, atque ad obfirmandam hanc regulam tranquillitati publicæ adeo necessariam, ii principes quibus nativitatis prærogativa jus in utroque regno succedendi tribuere poterat, uni e duobus pro se, totaque sua posteritate solemniter renunciaverint, adeo ut ista utriusque monarchiæ separatio in legem fundamentalem abierit, in comitiis generalibus, vulgo *las cortes*, Matriti die 9 mensis novembris 1712 receptam, et per tractatus Trajectenses, die 11 aprilis 1713, consolidatam, sua majestas cæsarea legi adeo necessariæ et salutari ultimum complementum datura, atque omnem sinistræ suspicionis causam tollere, tranquillitatique publicæ consulere volens, acceptat, et consentit in ea, quæ in tractatu Trajectensi super jure et ordine successionis in regna Franciæ et Hispaniæ acta, sancita et transacta fuerunt, renunciatque, tam pro se, quam pro suis hæredibus, descendentibus et successoribus maribus, fœminis, omnibus juribus, omnibusque in universum prætensionibus quibuscunque, nulla penitus excepta, in quæcunque regna, ditiones et provincias monarchiæ Hispaniæ, quarum rex catholicus, per tractatus

Trajectenses, agnitus fuit legitimus possessor, solemnesque desuper renunciationis actus, in omni meliori forma expediri, eosque publicari, et in acta, loco congruo, referri curabit, ac super his instrumenta solita suæ majestati catholicæ, partibusque compaciscentibus, exhibituram se promittit.

Art. 3.—In vim dictæ renunciationis, quam sua majestas cæsarea amore universæ Europæ securitatis, habita quoque ea ratione, fecit, quod dominus dux Aurelianensis, juribus et rationibus suis in regnum Hispaniæ, pro se et pro suis descendentibus sub ea conditione renunciaverit, ne imperator aut ullus ejusdem descendentium in dicto regno succedere unquam posset; sua majestas cæsarea agnoscit regem Philippum V legitimum Hispaniarum et Indiarum regem, eidemque tribuere promittit titulos et prærogativas dignitati suæ, regnisque suis debitas; sinet præterea eundem, ejusque descendentes, hæredes et successores, masculos et fœminas, pacifice frui cunctis iis ditionibus monarchiæ Hispaniæ in Europa, in Indiis et alibi, quarum possessio ipsi per tractatus Trajectenses asserta fuit, neque eum in dicta possessione directe vel indirecte turbabit unquam, aut ullum jus in dicta regna et provincias sibi sumet.

Art. 4.—Etc.

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